

Army Regulation 215-4

Morale, Welfare, and Recreation

Nonappropriated Fund Contracting

**Headquarters
Department of the Army
Washington, DC
10 September 1990**

UNCLASSIFIED

SUMMARY of CHANGE

AR 215-4

Nonappropriated Fund Contracting

Effective 10 October 1990

Morale, Welfare, and Recreation

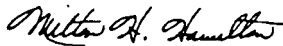
Nonappropriated Fund Contracting

By Order of the Secretary of the Army:

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History. This publication was originally printed on 9 December 1987. Since that time, permanent Change 1 has been issued. As of 10 September 1990, that change remains in effect. This UPDATE printing incorporates that change into the text. This UPDATE printing also publishes a Change 2. This publication has been reorganized to make it compatible with the Army

electronic publishing database. No content has been changed.

Summary. This regulation contains comprehensive acquisition policy for contracts that are paid with nonappropriated funds (NAF).

Applicability. This regulation applies to U.S. Army NAF contracting activities. It does not apply to the Army and Air Force Exchange Service (AAFES), the U.S. Army Reserve (USAR), the Army National Guard (ARNG), the Chaplain's Fund, the U.S. Army NAF Employee Retirement Plan Trust and the NAF Banking and Investment Fund (investment contracts only).

Proponent and exception authority. The proponent agency of this regulation is the Office of the Deputy Chief of Staff for Personnel (DCSPER).

Army management control process. The regulation is subject to the requirements of AR 11-2. It contains internal control provisions but does not contain checklists for conducting internal control

reviews. These checklists are contained in DA Cir 11-89-1.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from HQDA (CFSC-ZSC), ALEX VA 22331-0517.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by U.S. Army Community and Family Support Center. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (CFSC-ZSC), ALEX VA 22331-0517.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 12-09-E, block number 2562, intended for command level C for Active Army.

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Chapter 1

Authority, Policy and Responsibility

1-1. Purpose

This regulation implements policies and procedures governing acquisitions made with nonappropriated funds (NAF) within the Department of the Army (DA).

1-2. References

Required and related publications are listed in appendix A to this regulation.

1-3. Explanation of terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

a. *Commanding General (CG), U.S. Army Community and Family Support Center (USACFSC).* CG, USACFSC, is responsible for implementing policies and procedures for Army NAF acquisitions. The CG, USACFSC is responsible for the issuance of NAF contracting officers' warrants, and management and oversight of all CFSC contracting elements, which include the Hale Koa, the Dragon Hill Lodge, the Armed Forces Recreation Centers (AFRC—Garmisch, Chiemsee, and Berchtesgaden), and the Army Recreation Machine Program (ARMP).

b. *Installation commander.* The installation commander or designee (designee is without power of redelegation) is the approving authority for NAF acquisitions in the capacity stated in this regulation. Installation commanders are delegated authority by this regulation, and by virtue of their positions, to issue NAF contracting officer warrants in accordance with this regulation. If the installation commander delegates this authority to a designee, the designee should be an individual whose regulation duties will not conflict with the oversight and operation of the NAF acquisition activities (See para 1-5).

c. *Staff Judge Advocate (SJA)/Command Judge Advocate (CJA).* The SJA will provide legal advice to the installation commander, to the installation NAF contracting office, to the servicing appropriate fund (APF) contracting office, and to the USACFSC NAF contracting office concerning NAF acquisition matters within the scope of this regulation. As used in this regulation, SJA includes Command Judge Advocate (CJA).

d. *Contracting officer.* The contracting officers are responsible for—

(1) Ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract and safeguarding the interests of the United States and the NAFI in its contractual relationships.

(2) Designating the contracting officer's representatives (CORs). COR designations must be made in writing and must clearly define the limits of the COR's authority.

e. *CORs* The CORs are responsible to the contracting officer. They ensure that the contractor performs in accordance with the terms and conditions of the contract. CORs are further discussed in paragraph 7-2.

f. *MACOM Commander.*

(1) MACOM Commanders are responsible for management and oversight for NAF Contracting activities. This responsibility will include as a minimum—

(a) Management review visits.

(b) Clarification of NAF Contracting authority, policy, and responsibilities.

(c) Ensuring the separation of functions to the maximum extent possible.

(d) Ensuring adequate training commensurate with the complexity and dollar value of the acquisitions to be assigned.

(2) The USACFSC NAF Contracting Office will assist, as requested, in providing management assistance to all Army NAF Contracting Activities.

(3) A copy of all review findings will be forwarded to the Commanding General, U.S. Army Community and Family Support Center, ATTN: CFSC-ZSC, upon completion of each MACOM management review visit.

g. *Military entrance processing commander (MEP)*

(1) The Commander, U.S. Military Entrance Processing Command is recognized as an Installation Commander, and in this capacity is the approving authority for Army NAF acquisitions and issuance of Army NAF Contracting Officer's warrants for the U.S. Military Entrance Processing Command, in accordance with this regulation.

(2) The Commander, U.S. Military Entrance Processing is also responsible for management and oversight for NAF contracting activities. This responsibility will include:

(a) Management review visits.

(b) Clarification of NAF contracting authority, policies and responsibilities.

(c) Ensuring separation of functions to the maximum extent possible.

(d) Ensuring adequate training commensurate with the complexity and dollar value of the acquisitions to be assigned.

(3) The USACFSC NAF contracting office will assist, as requested, in providing management assistance.

(4) A copy of all review findings will be forwarded to the Commanding General, U.S. Army Community and Family Support Center, ATTN: CFSC-ZSC, upon completion of each visit.

1-5. Organization and protection of NAF acquisition activities

The NAF contracting activity at installation level will be located under the installation Services Division (AR 215-1, app B and AR 5-3). The installation commander or designee will ensure that those having administrative supervision over contracting officers and other NAF contracting personnel will not exert pressure or allow others to exert pressure towards NAF contracting personnel directed in an effort to cause contracting officers and other contracting personnel to take any actions which might violate applicable regulations.

1-6. Limitation of authority of NAF contracting officers

a. Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Nonappropriated Fund Instrumentality (NAFI) only to the extent of the authority delegated to them. Contracting officers will receive from the appointing authority (para 1-8) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority will be readily available to the public and organizational personnel.

b. No contract will be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and other applicable procedures, including clearances and approvals, have been met.

c. In order to perform these requirements, contracting officers should be allowed wide latitude to exercise business judgement. Contracting officers will—

- (1) Ensure that the requirements in *b* above have been met and that sufficient funds are available for obligation.
- (2) Ensure that contractors receive impartial, fair, and equitable treatment.
- (3) Take into consideration the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

d. The NAF contracting officer will verify that the purchase request is complete, contains all required signatures, and provides enough descriptive data to make the purchase.

e. When vendors have submitted their proposals, the contracting officers will evaluate the offers and determine whether the potential contractors are responsive and responsible.

f. NAF contracting officers will not—

- (1) Enter into, amend, or modify a contract that has a dollar value over the dollar limitations authorized by their warrants.
- (2) Issue a contract modification if it increases the total contract price in an amount over their dollar limitations, even if the modification is within their dollar limitations.
- (3) Reverse a former contracting officer's decision unless the decision has been proven to be erroneous and not indicative of fair and reasonable treatment, and then only if approved by the Assistant Director for Community and Family Activities (ADCFA).
- (4) Delegate their signature and/or decisionmaking authority as contracting officers.
- (5) Take actions exceeding their authority as contracting officers.
- (6) Obligate appropriated funds.
- (7) Use acquisition procedures prohibited by this regulation.
- (8) Ratify unauthorized commitments.

g. NAF contracting officers will be guided by the following operating principles:

- (1) Standards of conduct as prescribed by AR 600-50.
- (2) Contract awards will be based on maximum practicable competition. Sole source contracts will be minimized and fully justified when used.
- (3) Contracts will be legally sufficient, i.e., all statutory and regulatory requirements will be satisfied.
- (4) Contracts will be awarded to responsible firms who offer the best value, price, and other factors considered.
- (5) Contract awards will be followed up vigorously to ensure timely delivery and conformance with contract provisions.

h. Dollar limitations for NAF contracting officer appointments will not exceed the following amounts, except as listed in *i* and *j* below:

- (1) \$25,000 for supplies, services, entertainment and construction.
- (2) \$50,000 for resale (see para 5-48).
- (3) Delivery orders against competitively awarded contracts and agreements—unlimited or as set forth in the basic contract or agreement, or as established by the installation commander or designee (see delivery orders, para 4-17).
- i.* Dollar limitations for NAF contracting officer appointments for HQ, USACFSC NAF Contracting Division; the Hale Koa Hotel, AFRC Europe and the Army Recreation Machine Program will be set by the Commander, USACFSC. Dollar limitations for NAF contracting officer appointment in the Nonappropriated Fund Supply, Acquisition, and

Contracting Agency, Europe (NAFSAC) will be set by the USAREUR, Head of Contracting Activities (HCA or designee).

j. Only contracting officers have the authority to solicit and award fixed fee and/or percentage of sales or gross proceeds types of revenue generating contracts. There is no dollar limitation on revenue generating contracts or agreements (for example, concession contracts, consignment agreements or other income generating instruments).

k. Procurements which combine appropriated and nonappropriated funds will be accomplished by an appropriated fund contracting officer using appropriated contracting procedures (See AR 215-1, para 10-2).

1-6.1. Ordering Officers

a. Ordering officers requirements are as follows:

(1) It is the U.S. Army Community and Family Support Center NAF contracting policy that—

(a) The contracting officer (hereinafter referred to as appointing authority) is responsible for the efficient performance of the procurement mission assigned, installation or activity concerned, and appointing ordering officers.

(b) The procurement function not be decentralized by the indiscriminate appointment of ordering officers.

(c) Ordering officers not be appointed within a contracting office.

(2) Ordering officers may be appointed for the purposes in (3) below, provided the appointing authority determines that such appointment is essential for the efficient operation of the procurement mission.

(3) Ordering officers may be appointed for the following limited purposes:

(a) To make over-the-counter purchases not exceeding \$1,000 using DA Form 4066-R.

(b) To place delivery orders against indefinite delivery type contracts awarded by the contracting officer, provided the contract terms so permit and provided all orders placed are within monetary limitations set forth in the letter of appointment, but in no case will authority exceed \$2,500.

(4) The appointing authority will—

(a) Prohibit redelegation.

(b) Maintain a file of appointments and justifications

(5) Ordering officers appointment requirements include the following:

(a) Ordering officers will be appointed by a letter of appointment in the formats shown in figures 1-1 and 1-2 as applicable.

(b) Individuals appointed as ordering officers will be required to acknowledge receipt, in writing, of their letters of appointment.

(c) Appointing authorities will make distribution of copies of letters of appointment to ordering officers, central accounting offices, and such other interested personnel, as may be necessary.

(d) The appointing authority will notify contractors of the names of ordering officers appointed to place delivery orders against their contracts, except that such notification is not required when ordering officers are named in contracts. Notifications to contractors may be accomplished by furnishing contractors with copies of ordering officers' letters of appointment.

(6) The appointing authority will orient and instruct ordering officers either personally or in writing on the—

(a) Proper use of the procedure the ordering officer will be authorized to use.

(b) Standards of Conduct for Department of the Army personnel prescribed in AR 600-50.

(c) Preparation and submission of information for procurement reporting purposes.

b. Surveillance over ordering officers is as follows:

(1) Ordering officers will be under the technical supervision of the appointing authority.

(2) At least twice each year activities of ordering officers will be physically inspected or reviewed through examination of his or her purchase documents and records by the appointing authority or his or her designee. The designee should be an individual well qualified in NAF procurement procedures.

(3) Inspection or review findings will be in writing, including specific comments as to whether or not the ordering officer was—

(a) Operating within the scope and limitations of his or her authority.

(b) Maintaining the standards of conduct prescribed in AR 600-50.

(c) Splitting purchase transactions to avoid monetary limitations.

(d) Delegating his or her authority to others.

(e) Submitting correct and timely information for procurement reporting purposes.

(4) Copies of inspection and review findings will be retained for one year in the files of both the ordering officers and the appointing authority.

(5) Should an appointing authority find that an ordering officer is not properly performing his or her duties or fails to take prompt action to correct deficiencies noted in inspections or reviews, the appointing authority will terminate the appointment of the ordering officer.

c. Termination of appointments are as follows:

(1) The appointment of an ordering officer will remain in effect until the ordering officer is reassigned, employment terminated or the contract expires or is terminated. No revocation will be made to take effect retroactively.

(2) Terminations of appointments will be in writing in substantially the same format as shown in figure 1–3. No written termination of the ordering officer appointment is required if the contract expires on its own terms. However, when contracts are terminated prior to the expiration dates established in the contracts, a written termination is required.

(3) The appointing authority will notify contractors, central accounting offices, and other interested personnel of termination of appointments of ordering officers. Such notification will be in writing and may be accomplished by furnishing copies of the termination of appointment letters.

1–7. Selection

a. Appropriated fund (APF) contracting officers. Pursuant to AFARS 1.9003, appropriate fund contracting officers will be designated as nonappropriated fund contracting officers to solicit, award, and administer NAFI contracts and/or procurement transactions in excess of \$25,000 for supplies, services, entertainment, and construction. In addition, any contract actions that cannot be accomplished by the NAF Contracting Office, regardless of dollar amount, may be accomplished by APF contracting officers. APF contracting officers, in accomplishing NAF procurements, will utilize the policies and procedures set forth in this regulation.

b. NAF contracting officers. The Assistant Director for Community and Family Activities (ADCFA) will recommend, with complete justification, the appointment of a NAF contracting officer to the installation commander or designee, when it has been determined that the appointment of a NAF contracting officer to solicit, award, and administer NAF contracts, is in the best interest of the NAFI. USACFSC, Hale Koa Hotel, AFRC Europe and Army Recreation Machine Program contracting officers will be selected and appointed by the Commander, USACFSC. NAF contracting officers for USAREUR NAFSAC will be selected and appointed by the USAREUR HCA or designee (designee is without power of redelegation). NAF contracting officers are encouraged to request the technical advice and assistance of an APF contracting officer.

c. Appointing official. In selecting contracting officers, the appointing official will consider the complexity and the dollar value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Selection criteria will be based on—

- (1) Experience in Government or NAF contracting and administration, commercial purchasing, or related fields.
- (2) Education or special training in business administration, law, accounting, engineering, or related fields.
- (3) Knowledge of acquisition policies and procedures herein and other applicable regulations.
- (4) Specialized knowledge in the particular assigned field of contracting.
- (5) Satisfactory completion of acquisition training courses. As a minimum to qualify as NAF contracting officers, individuals must have completed one of the following courses: the Defense Small Purchase course, or the Nonappropriated Fund Small Purchase course, or equivalent training for a warrant not to exceed \$5,000 (\$25,000 for resale). To qualify for a warrant of \$25,000 (\$50,000 for resale) incumbents are required to complete either the Management of Defense Acquisition Contracts (Basic) course, or the Nonappropriated Fund Contracting–Advanced or equivalent training. A determination of course equivalency will be made by the USACFSC NAF Contracting Division.

1–8. Appointment of contracting officers

a. Contracting officers will be appointed in writing on a “Certificate of Appointment” that will state any limitation within the scope of authority to be exercised. Appointing officials will maintain files containing copies of all certificates of appointment that have not been terminated.

b. Contracting officer appointments specifically define the scope of the contracting officer's authority in respect to dollar limitations and types of contract they may enter into. These limits will not be exceeded under any circumstances, to include issuance of any modification to a contract that may render the contract price to be in excess of set dollar limitations. Appointments may also designate an individual as a contracting officer for a single project for a specified period of time. In addition, appointments may be made for any incremental amounts up to the established ceiling limits as long as the training requirements are satisfied. The authority of contracting officers is limited by the restrictions set forth in their appointments and by the contracting authority of the activity in which they work.

c. A duly appointed contracting officer may execute contracts obligating the NAFI only after required approvals have been obtained. The execution of a contract purportedly on behalf of the NAFI, exceeding the authority and limitations stated in the contracting officer's warrant may result in a void or voidable document and, under some circumstances, may result in a personal liability by the individual signing the contract. The number of contracting officers appointed will be kept to the minimum essential for efficient operation.

d. Procurements over the warrant limitations of the NAF contracting officer will be accomplished by an APF contracting office, the HQ, USACFSC contracting office or a MACOM centralized NAF contracting agency (paras 3–11 and 3–12).

1-9. Termination of contracting officers

Termination of a contracting officer appointment will be by letter, unless the certificate of appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination will operate retroactively. Terminations will be made by the appointing authority.

1-10. Negotiation

Negotiation is usually the most suitable method by which to obtain the NAFI's purchases. The authority to negotiate is contained in Department of Defense Instruction (DODI) 4105.67. Negotiation is the preferred method for accomplishing NAF procurements and will be accomplished on a competitive basis to the maximum extent practicable. However, sealed bidding procedures may be used when required by this regulation or when it can be documented as being more advantageous to the NAFI.

1-11. Competition

a. Purchases not exceeding \$2,500 may be accomplished without seeking competition if the price is considered to be fair and reasonable (para 4-8). Such purchases will be distributed equally among qualified suppliers. The absence of the competition requirement, however, does not preclude the need for comparative pricing to obtain the most favorable cost to the NAFI. Such comparative pricing can be made by the use of published price lists or telephone calls to potential vendors. If the cost of the purchase is \$2,500 or less, but a determination of reasonableness cannot be made on the quoted price, competition should be sought. Under no circumstances will a requirement be split in order to evade small purchase limitations or competition requirements.

b. Competition must be obtained on all purchases over \$2,500 (except for commercial entertainment) unless a valid sole source justification is obtained.

(1) Competition exists when all of the following conditions are met:

(*a*) Offers are solicited from at least three responsible offerors.

(*b*) All offers are submitted independently of each other.

(*c*) At least two offers (except see para 4-8*b*) are received that are responsive to the requirements of the solicitation.

(2) Generally, adequate competition does not exist if—

(*a*) Prices are obtained from a manufacturer and two of the same manufacturer's representatives. For guidance on brand-name purchases, see paragraph 3-9.

(*b*) A price for an item is solicited from a vendor that does not normally supply the type of item requested.

(*c*) Procurements made by the use of established NAF contracts or agreements (except for requirements contracts) or General Services Administration (GSA) Federal Supply contracts are subject to comparative pricing to assure the procurement is to the best advantage of the NAFI, price, and other factors considered. Files should be documented to reflect basis for award.

1-12. Reviews and approvals

a. All procurement requests DA Form 4065-R (Army NAF Purchase Request) require approval by the ADCFA, NAFI Fund Manager or designee (designation of this authority will be per AR 215-1, chap 9), and if the cost is estimated to be in excess of \$25,000, excluding merchandise for resale, approval by the installation commander or designee is required. DA Form 4065-R will be locally reproduced. A copy for local reproduction purposes is located at the back of this book. In addition, all concession contracts, major entertainment events, such as contracts with nationally known entertainers, regardless of dollar amount, will be approved by the ADCFA. Reviews and approvals for HQ, USACFSC and the Hale Koa Hotel, will be as established by the USACFSC Commander.

b. All commercial audit solicitations to be issued by USACFSC will be reviewed by United States Army Audit Agency (USAAA) prior to issuance. A copy of the signed contract will be forwarded to USAAA. Upon completion, one copy of the final commercial audit will also be forwarded to USAAA.

c. In addition, approvals for construction projects will be in accordance with AR 215-1, chapter 6.

d. Legal reviews of NAF acquisitions will be as stated in paragraph 1-13.

e. See appendix B for approval authority required by dollar limitation.

1-13. Legal reviews

a. Legal reviews. Complete files, including solicitation documents, contracts, and appeal documents (as applicable) will accompany each request for legal review.

(1) The following will be submitted for legal review prior to issuance or execution:

(*a*) All solicitations and contracts anticipated being in excess of or in excess of \$100,000.

(*b*) Proposed awards that may result from an unsolicited proposal.

(*c*) All decisions concerning disputes, protests, and appeals.

(*d*) Termination actions and supporting documentation.

- (e) Recommendations for suspension or debarment of any NAF contractor.
- (f) Blanket purchase agreement (BPA) formats and any substantive changes to approved formats.
- (g) Decisions concerning requests for release of acquisition information under the Freedom of Information Act (FOIA).
- (h) All proposed concessionaire, professional service, and amusement company (carnival, rodeo, circus, etc.) contracts, regardless of estimated dollar amount.
- (i) All ratification actions. (See para 1–24 for more information on this subject.)
- (j) All requests for use of other than firm–fixed price type contracts.
- (k) Determination of whether a proposed service is for personal or nonpersonal services, when not clearly defined.
- (l) All Congressional inquiries pertaining to NAF contracting actions.
- (2) These requirements will be reviewed subject to availability of legal resources.
- (a) Entertainment contracts to which the Service Contract Act applies, a royalty and copyright clearance is required, or the nature of the entertainment may present a physical risk to either the entertainers, the audience, or property. (See AR 215–2, chap 6.)
- (b) All decisions concerning the handling of late proposals and alleged or actual mistakes in proposals.
- (c) Show cause notices, cure notices, and applicable documentation.
- (d) All proposed contractual documents involving the purchase of lease of real estate or license to use real estate.
- (e) Questions concerning tax status of NAFIs when not clearly defined.
- b. *Notice of legal sufficiency.* Legal counsel will inform the contracting officer, in writing, whether a proposed action is legally sufficient (or the details of any insufficiency) and a recommended course of action to overcome the insufficiency. The contracting officer will take steps to overcome legal objections to the proposed action. Unresolved differences between the contracting officer and legal counsel on legal insufficiency will be referred to the installation commander or designee.

1–13.1. NAF Procurement of ADP Resources

- a. The purchase of automated data processing equipment (ADPE), software, and information management area (IMA) items and services, with nonappropriated funds, will be accomplished only by nonappropriated fund contracting officers using the purchasing methods and approval levels set forth in this regulation. These procurements shall not be sent to the appropriated fund contracting office. Purchases above the warrant of the local NAF contracting officer shall be forwarded, through the MACOM, to the USACFSC Contracting Division for accomplishment. Information management area items include items such as computers, video equipment, copiers, facsimile machines, projectors, etc.
- b. It is not mandatory for nonappropriated fund activities to submit NAF funded requests for automated data processing equipment (ADPE) or information management area requirements through the local Directorate of Information Management (DOIM) for approval. Due to the purpose and nature of NAF activities, the responsibility for ownership, operation, and maintenance of NAF procured property will routinely remain with the NAF activity.
- c. The fielding of any information system required prior planning and coordination with the host command, host functional proponent, and host information manager regardless of who owns or uses the system or what type of funds were used to acquire it. For example, if a NAF information system is going to communicate through NON–NAF means and/or be a part of NON–NAF local area network, the NAF activity is required to coordinate with the local commander and information manager to ensure the support will be there when required.
- (1) It is an implied responsibility of a host information manager to assist local NAF activities in planning for the procurement of NAF information system resources. This assistance could be extended to include recommending the host appropriate technical solution.
- (2) It is appropriate for host commanders to require that NAF activities comply with standard Army policies and procedures when fielding an information system if that system impacts or has the potential of impacting adversely on the host’s capability to perform his operational mission. For example, if a NAF information system has the potential of degrading and/or overloading a host mission information system, then the NAF system proponent may be required to field another technical solution or find other means to acquire needed support.
- (3) Funding of NAF systems will remain a NAF responsibility. NAF equipment will remain with the using NAF activity. Host MACOMs and their supporting USAISC elements have no responsibility to support NAF activities in the area of software, unless directed to do it by the host MACOM as mission essential. Life cycle management of NAF information systems should be a NAF responsibility. Maintenance of NAF information systems should be a NAF responsibility and no realignment of manpower should be required.

1–14. Separation of functions

- a. The integrity of the contracting system is best protected by this separation of functions combined with adequate training and basic honesty of those involved with contracting. No contracting system is fraud–proof. Violators will be dealt with as appropriate, including the imposition of administrative, civil, and criminal penalties.
- b. The following steps in the acquisition process will be performed by different people:

- (1) Issuance of the purchase request.
- (2) Approval of the purchase and certification of the availability of funds.
- (3) Execution of purchase orders, delivery orders or contracts on behalf of the NAFI.
- (4) Receipt of goods or services.
- (5) Issuance of the check in payment of the purchase.

1-15. Period of contracts

a. No contract will be entered into for a period exceeding 5 years (including extensions, renewals or both) without the prior approval of the major command (MACOM) commander, who will consider such matters as market stability, availability of the item or service being purchased, and availability of funds to make contract payments. The MACOM commander's approval may be accomplished either on an individual contract basis or by particular classes of contracts.

b. Construction contracts or other project-type contracts specifying a completion date as opposed to a contract period or date of performance are not subject to the above approval requirements.

1-16. Small Business Act

Although the provisions of the Small Business Act (15 USC 631 et seq.) do not apply to NAF acquisitions. NAF contracting officers will ensure that small businesses and minority firms are given an opportunity to compete for NAF requirements.

1-17. Buy American Act

The Buy American Act applies to purchases made by NAFIs for use in the United States but does not apply to purchases for use by NAFIs overseas. "United States", as used in this regulation means the United States, its possessions, Puerto Rico, and any other places subject to its jurisdiction, but does not include leased bases or trust territories. For purchases for use in the United States, the following requirements apply:

- a.* DOD FAR Supplement (DFARS), part 25, subpart 25.1 (Buy American Act—Supplies).
- b.* DFARS part 25, subpart 25.2 (Buy American Act—Construction Materials).
- c.* DFARS part 25, subpart 25.71 (Canadian Purchases).
- d.* AFARS subpart 25.1 (Buy American Act—Supplies) and Subpart 25.7.

1-18. Walsh-Healey Act

The Walsh-Healey Public Contracts Act (41 USC 35-45) applies to contracts, including indefinite-delivery contracts, basic ordering agreements, blanket purchase agreements, and certain subcontracts for the manufacture or furnishing of supplies that are to be performed within the United States, Puerto Rico, or the Virgin Islands and that exceeds or may exceed \$10,000 unless exempted by the Act. However, if determined in advance that the aggregate amount of all orders estimated to be placed under the contract or agreement for one (1) year after the effective date of the contract or agreement will not exceed \$10,000, or contract or agreement is limited to \$10,000 or less by the terms of the contract or agreement, then the Act will not apply. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified, if necessary.

1-19. The Davis-Bacon Act

The Davis-Bacon Act (40 USC 276a) requires that construction contracts over \$2,000 contain a clause that states that no laborer or mechanic employed directly upon the site of the work covered by the contract will receive less than the prevailing wage (including basic hourly rates and fringe benefits) as determined by the Secretary of Labor. The requirements pertaining to the Davis-Bacon Act, set forth in FAR Subpart 22.4, DFARS Subpart 22.4 and AFARS Subpart 22.4, will be followed as they apply to NAF construction contracts.

1-20. The Copeland Act

The Copeland Act (Anti-Kickback Act) (18 USC 874 and 40 USC 276c) is applicable to construction contracts and subcontracts. It prohibits attempts to avoid minimum wage requirements of the Davis-Bacon Act by taking kickbacks on wages paid employees and authorizes the imposition of criminal penalties for the violation of the Act.

1-21. International Balance of Payments Program (IBOPP)

The International Balance of Payments Program is applicable to NAFIs located outside the United States, its possessions and Puerto Rico, as defined in DOD Directive 7060.3 (International Balance of Payments Program—Nonappropriated Fund Activities). (See also AR 215-1, chap 10 and AR 215-5, chap 12.)

1-22. Trade Agreements Act

a. In accordance with Public Law 96-39 reports of individual NAF contract actions for covered supplies and equipment, as specified in DOD FAR Supplement (DFARS) subpart 25.4, where the total dollars obligated exceeds

\$172,000, will be submitted to the USACFSC NAF Contracting Office within 10 calendar days after the date of the contract action.

b. The report will include contract number, modification number, date of action (year, month), total dollars obligated or de-obligated, principle product, country of origin of foreign components of products manufactured in the United States, country of manufacture.

c. Reportable NAF contract actions include—

(1) A contract that obligates more than \$172,000.

(2) An indefinite delivery type contract or NAF Basic Ordering Agreement (BOA) that may result in obligations during the fiscal year that accumulate to more than \$172,000 (orders against these contracts or orders against BOAs are not to be reported individually).

3. A modification that obligates more than \$172,000.

(4) A modification that terminates a contract that was previously reported.

(5) Two or more contracts for the same product that resulted from a single solicitation when the total amount of the multiple contracts exceeds \$172,000. This dollar figure will remain in effect until at least 1 January 1992.

1–23. Taxes

a. NAFIs are entitled to the same immunity from State and local taxes as the Government of the United States. NAFIs will not pay any tax to, nor collect tax for, any foreign country or political subdivision, unless the United States has consented to such a levy or collection.

b. Tax questions will be referred to the Staff Judge Advocate (SJA) or legal counsel.

c. Independent conferences or direct negotiations with state and local tax authorities will not be undertaken to obtain exemption or refund, or to determine the applicability of any tax, except upon express authority of The Judge Advocate General, ATTN: DAJA-KL, Washington, DC 20310–2200. (See AR 215–1, chap 15.)

1–24. Ratifications of unauthorized commitments

a. *Ratification.* Ratification is the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the NAFI as a result of the unauthorized commitment. Only contracting officers acting within the scope of their authority may enter into contracts on behalf of the fund. A contractual commitment that is invalid solely because the individual who made it lacks the authority may be made valid by ratification.

b. *Ratification authorities.* For unauthorized commitments of \$25,000 or less, the ratification authority is the installation commander or designee. Designation for ratification may not be made below the Director of Personnel and Community Activities (DPCA) responsible for the NAFI. The MACOM or next higher commander or designee is the ratification authority for unauthorized commitments that exceed \$25,000. The ratification authority for NAF activities directly under the HQ, USACFSC, for unauthorized commitments of \$2,500 or less is the Chief, NAF Contracting Division located in Alexandria, VA. The USACFSC Commander or designee is the ratification authority for unauthorized commitments that exceed \$2,500. Designations for USACFSC ratification authority may not be made below the Chief of Staff.

c. *Requirements.* Ratification is permitted only if all of the following requirements are met:

(1) The NAFI has obtained a benefit resulting from the unauthorized commitment (i.e., supplies or services must have been provided to, and accepted, by the NAFI).

(2) The resulting contract would otherwise have been proper if it had been made by a duly authorized contracting officer.

(3) The contracting officer determines that the price is fair and reasonable.

(4) Funds to make such payment are available.

d. *Procedures.* Each unauthorized commitment must be submitted to the ratification authority for review according to the procedures below.

(1) The individual who made the unauthorized commitment will prepare and sign a statement of all pertinent facts, covering at a minimum, the following matters:

(a) Why normal procurement procedures were not followed.

(b) What bona fide NAFI requirement necessitated the commitment.

(c) Whether any benefit was received, and its value.

(d) Copies of all relevant documents including orders and invoices.

(2) This signed statement will be forwarded to the chief of the activity in which the unauthorized commitment occurred, who, in turn, will—

(a) Review the documentation for accuracy and completeness and obtain further documentation if deemed necessary.

(b) Describe the measures taken to prevent a recurrence of unauthorized commitments, including a description of any disciplinary action (to be) taken.

(3) If the chief of the activity in which the unauthorized commitment occurred concurs that the commitment should be ratified, he or she will forward the documentation described in (1) and (2) above, along with a completed DA Form 4065-R with proper approvals and funding for ratifying the action, to the contracting officer with cognizance over the purchase request.

(4) The contracting officer will be responsible for the following:

(a) Reviewing and determining the accuracy and adequacy of all documentation furnished and for obtaining any additional information required.

(b) Determining that the price is fair and reasonable.

(c) Obtaining a written opinion from legal counsel on whether or not there is a factual and legal basis for ratification of the unauthorized commitment.

(d) Making a recommendation for or against ratification.

(5) For unauthorized commitments of \$25,000 or less, the contracting officer will forward his or her recommendation to the ratification authority who, upon receipt and review of the complete file, may authorize the ratification if he or she deems it to be in the best interest of the NAFI, or direct other disposition as appropriate. If the Ratification Authority authorizes the ratification, he or she will return the file to the contracting officer for issuance of appropriate contractual documents to effect payment of the unauthorized commitment. For unauthorized commitments that exceed \$25,000, the contracting officer will forward his or her recommendations to the Installation Commander. The Installation Commander, upon receipt and review of the complete file, will forward his or her recommendation to the ratification authority.

1-25. Standards of conduct

All individuals involved in any way with acquisitions under this regulation will abide by the requirements of AR 600-50. (See also AR 215-1, chap 17.)

1-26. Acquisition conferences

Installation commanders will ensure that semi-annual conferences for NAF and APF contracting personnel, key operating personnel, and legal counsel are held to—

a. Furnish guidance on new acquisition procedures.

b. Develop improvements in acquisition methods and procedures.

c. Resolve acquisition problems.

d. Determine the extent to which supplies can be consolidated into single purchases.

e. Identify sources of supply.

f. Discuss any other relevant acquisition topics.

g. Ensure new key personnel are briefed on the acquisition process.

1-27. Funds not covered by AR 215-4

The funds listed below are not subject to this regulation.

a. U.S. Army NAF Employee Retirement Plan Trust.

b. The Army Banking and Investment Fund (ABIF). The ABIF is governed by DODI 7000.12, AR 215-1, AR 215-5, AR 11-2, AR 600-50 and CFSC Supplement 215-5.

Chapter 2 Administrative Matters

2-1. Uniform Procurement Instrument Identification Numbers (PIIN) (Document Numbering System)

a. The uniform procurement instrument identification numbering system will be used by NAF and APF contracting activities for identifying NAF procurement contracts and agreements.

b. Any prescribed supplementary numbers (i.e., Activity Accounting Codes, Capital Purchase and Minor Construction (CPMC) Project Numbers, etc.) will be placed in spaces provided on the applicable contracting forms.

c. NAF and APF contracting activities will establish and maintain separate document registers (DA Form 5565-R, Document Register (Solicitations) (Nonappropriated Funds) and DA Form 5566-R, Document Register-Award/Agreements (Nonappropriated Funds)) for each of the various NAF procurement instruments. Registers will be maintained on a fiscal year basis and sequential numbers will start over at the beginning of each fiscal year. DA Form 5565-R and DA Form 5566-R will locally reproduced on 8½- by 11-inch paper. Copies for local procurement purposes are located at the back of this book. (See sample Document Register for Solicitations and Awards/Agreements figs 2-1 and 2-2.)

d. All NAF solicitations and contracts (including purchase orders, delivery orders, and agreements) will be numbered in the format shown below. The basic contract number assigned to the document will remain unchanged for the period of the contract, including any extensions.

e. The uniform procurement instrument identification number (PIIN) system will consist of 13 alphanumeric characters positioned as shown below.

(1) The first six positions will identify the contracting activity. The first three positions will be “NAF” to denote NAF. The fourth and fifth positions will be taken from AR 215–1, table G–1. The sixth position will designate the issuing office as follows:

- (a) 1—will denote the NAF contracting office.
- (b) 2—will denote the APF contracting office.
- (c) 3—all subsequent numbers will be locally assigned to identify any satellite contracting offices.
- (2) The seventh and eighth positions will be the last two digits of the fiscal year in which the PIIN is assigned.
- (3) The ninth position will be a capital letter assigned to indicate the type of instrument code, as follows:

Table 2–1A
Ninth position code

A	Blanket purchase agreements (BPA).
B	Invitation for bids (IFB) (sealed bidding).
C	Contracts, including letter contracts and contracts incorporating basic agreements, but excluding indefinite delivery type contracts.
D	Indefinite delivery type contracts.
F	Delivery orders places with or through other Government departments or agencies or against contracts or agreements placed by such departments or agencies when placement of orders is allowed.
G	Basic ordering agreements (BOA).
H	Agreements, including basic agreements.
L	Lease agreements.
M	Purchase orders.
Q	Request for quotations (RFQ).
R	Request for proposals (RFP).
S	Entertainment contracts.
T	Revenue generating contracts or agreements.

(4) The tenth through thirteenth positions will be the serial number of the instrument. Each series of serial numbers will commence with the number 0001 at the start of each fiscal year. Alphanumeric serial numbers will be used when more than 9999 numbers are required, i.e., A001 through A999, then B001 through B999, etc., on to Z001 through Z999 (the letters I and O will not be used).

f. The following illustrates the configuration of the PII number:

Table 2–1B
NAFBA1-86-M-0001

Position	Contents
1-6	The letters “NAF” denote the nonappropriated fund. The last remaining digits identify the contracting office NAFBA1.
7-8	Last two digits of the fiscal year in which PIIN is assigned. 86
9	Type of procurements instrument code M.
10-13	Four position serial number 0001.

g. Modifications to contracts and agreements will be numbered by use of six position alphanumeric number supplementary to the 13 position basic PIIN, as follows:

(1) The first position will be a capital letter “P ” identifying the modification as being issued by the contracting office.

(2) The second through sixth positions will be a serial number commencing with 00001.

h. Amendments to each solicitation document will be sequentially numbered by use of a four position numeric serial number, supplementary to the basic PIIN, commencing with 0001.

2-2. Numbering purchase requests

Requesting activities will be required to sequentially number purchase requests. At the beginning of the fiscal year, the number will revert to 01. Individual activity codes may be included with sequential numbers if considered appropriate at installation level.

2-3. Contract forms provided by the contractor

Signing contractor-provided contract forms on behalf of the NAFI is not authorized. NAF contracts will only be written on forms authorized by this regulation. (See para 4-1.)

2-4. Contract execution

a. Contracting officer's signature. Only contracting officers will sign and execute contracts on behalf of the NAFI. The contracting officer will personally sign all contracts and related instruments and supporting contractual documents that require the signature of the contracting officer.

b. Contractor's signature. The contracting officer will ensure that the individual or agent signing the contract has authority to bind the contractor.

c. Order of signatures.

(1) Unilateral instruments will be signed by the contracting officer before mailing to the contractor.

(2) Bilateral instruments \$25,000 or less will be signed by the contracting officer before the contractor, if determined by the contracting officer that items of supply or services are urgently needed, otherwise, such instruments will be signed after they have been signed by the contractor.

(3) Bilateral instruments in excess of \$25,000 will normally be signed after they have been signed by the contractor, unless determined by the contracting officer that items of supply or services are urgently needed.

d. Change in contracting officers. Contracting officers will be changed in writing by modification (administrative changes) (DA Form 4073-R, Amendment of Solicitation/Modification of Contracts (NAF)) or by letter. DA Form 4073-R will be locally reproduced on 8½- by 11-inch paper. A copy for local reproduction purposes is located at the back of this book. Copies will be distributed as outlined in paragraph 2-5.

2-5. Distribution of contractual instruments

a. Contracting officers will distribute copies of contractual instruments that have been awarded as follows:

(1) One copy to the contractor with original signature(s).

(2) One copy to the accounting office with original signature(s).

(3) One copy to be retained in the contracting office with original signature(s).

(4) One copy to the receiving activity.

(5) Other copies distributed as required by local regulation.

b. Additional distribution should be kept to the minimum necessary for performance of the mission.

2-6. Subcontractors

No privity of contract (contractual relationship) exists between the NAFI and the subcontractor, and there is generally no basis on which the subcontractor can sue the NAFI for payment due under a subcontract. If for some reason the prime contractor cannot or will not pay the subcontractor, the subcontractor will not be able to recover directly against the NAFI. Disputes between the prime contractor and its subcontractor(s) will be handled by them in accordance with the terms of the contract(s) between those parties.

2-7. Labor disputes

When a labor dispute arises between a contractor and the contractor's employees, NAFIs will remain impartial and will refrain from the conciliation, mediation, or arbitration of any such dispute. NAFIs will cooperate, and encourage contractors to cooperate, with federal and State agencies responsible for enforcing requirements concerning safety, health and sanitation; maximum hours and minimum wages, equal pay for equal work; child and convict labor; and equal employment opportunity. The contracting officer will require the contractor to report any ongoing or potential labor dispute that might have an impact on delivery or performance.

2-8. Collect telephone calls

NAFI personnel will neither place collect telephone calls to contractors or potential contractors, nor accept collect telephone calls from contractors or potential contractors.

2-9. Advertising by the contractor

a. The following clause will be incorporated into solicitations and resulting contracts for NAFI resale activities:

“The contractor shall not represent, in any manner, expressly or by implication, that the products or services purchased under this contract are endorsed by any element of the United States Government. Any advertisement which refers to a military resale activity shall contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity. All such advertisements prepared by the contractor must be approved by the contracting officer prior to their release.”

b. Additional guidance concerning the use of advertising by morale, welfare, recreation (MWR) activities is contained in DODI 1015.2 and in AR 215-1, chapter 10.

2-10. Defense Contract Audit Agency (DCAA)

The DCAA may be requested to furnish audit services with respect to the evaluation of price proposals where negotiated contracts, estimated to amount to \$100,000 or more, are to be awarded on the basis of cost or pricing data submitted by the officers. DCAA may also be asked to audit costs incurred under cost reimbursement or incentive contracts where the amount to be paid, except for fee or profit, is determined by costs incurred by the contractor (DODI 7600.6).

2-11. Exceptions

a. Written requests for exceptions to this regulation will be sent through the (MACOM) to USACFSC (CFSC-ZSC) ALEX, VA 22331-0517. Each request will contain the following:

- (1) An explanation as to why the exception is needed.
- (2) A full description of the requested exception.
- (3) A statement as to what the exception is expected to accomplish.
- (4) A statement concerning how long the exception will be needed.

b. USACFSC, NAF contracting office will respond in writing through the MACOM to all requests for exceptions.

2-12. Release of advance acquisition information

Pursuant to AR 600-50, personnel will not provide potential contractors with advance information concerning proposed acquisitions. Such information will be released only by duly appointed contracting officers, acting without the scope of their authority, by issuing presolicitation notices or solicitations simultaneously to all interested, qualified sources to avoid giving any potential offerors an advantage over others. In no event will estimates for prices be revealed to potential contractors either before or after issuance of the solicitation. However, segments of an estimate that do not reveal the overall estimate or total may be used in negotiations if necessary.

2-13. Prompt payment discounts

Discount time will be computed from the date of delivery at the place of acceptance, or from receipt of the correct invoice at the office specified by the NAFI, whichever is later. In the case of overseas shipments, the invoice is often received far in advance of the goods. The contractor should be advised to furnish with the invoice a copy of the receiving ticket obtained when the goods are delivered to port. Payment for the goods may then be made upon receipt of the invoice (even though the goods have not been received overseas) and the prompt payment discount will not be lost. Prompt payment discounts are to be taken on the gross amount of the invoice if the goods are delivered Free On Board (F.o.b.): Destination. If the goods are delivered as F.o.b.: Other, and a separate freight charge is involved, the prompt payment discounts will only be taken on the cost of goods, exclusive of freight or handling charges (see 5-62).

2-14. Contract clauses

a. *Supply and service contracts.* Contract clauses for supply and service contracts are found on DA Form 4074-R (Contract Clauses-Nonappropriated Fund Supply and Service Contracts) and for overseas contracts, DA Form 4074-1-R (Contract Clauses Nonappropriated Fund Supply and Service Contracts (OCONUS version.)) DA Form 4074-R and DA Form 4074-1-R will be locally reproduced on 8½- by 11-inch paper. Copies for local reproduction purposes are located at the back of this issue.

b. *Construction and related contracts.* Contract clauses for construction, alteration, and repair contracts are found on DA Form 4075-R (Contract Clauses-Nonappropriated Fund Construction, Alteration and Repair Contracts). Contract clauses for architecture and engineering contracts are found on DA Form 4075-1-R (Contract Clauses (NAF Architecture-Engineer Contracts)). DA Form 4075-R and DA Form 4075-1-R will be locally reproduced on 8½- by 11-inch paper. Copies for local reproduction purposes are located at the back of this issue.

2-15. Contract forms

All NAF acquisitions will be accomplished using NAF contract forms. Forms are located at the back of this volume and can be reproduced locally in the method most suitable for installation usage. (Quantity orders should be in line with expected usage.) *Note:* All forms are subject to change.

2-16. Emergency purchase procedures

a. An emergency purchase is a requirement for emergency-type services or repairs or for purchase of resale or consumable goods that are needed immediately due to an unforeseeable combination of circumstances requiring immediate action and which cannot be obtained through the use of normal purchase procedures and the delay of which may cause destruction or loss of NAFI property or assets. Some examples of emergency purchases are: a refrigeration compressor malfunction that may cause the imminent loss of perishable subsistence goods; the possible malfunction of an automated point-of-sale system that may result in the loss of revenues. Emergency purchase procedures will not be used to alleviate the need for prior planning or to circumvent normal procurement procedures. Contracting personnel will establish service contracts, BPAs, and requirement contracts, when possible, to minimize the need for emergency purchases procedures.

(1) *During normal duty hours of the NAF contracting office.* During normal duty hours, all requirements will be submitted to the NAF contracting office for immediate processing. Emergency requirements will be hand-carried through channels to the contracting office. When the purchase request is received in contracting, immediate attention will be given the action in order to meet required delivery timeframes. A completed justification as possible, given the immediacy of the need, will be forwarded with the request. If an emergency item or service is not immediately available, an acceptable substitution will be sought. Any substitution will first be coordinated with the requiring activity.

(2) *After normal duty hours of the NAF contracting office.* Emergency purchase procedures for after duty hours will be established as follows and processed accordingly:

(a) The Chief of NAF contracting will appoint, in writing, no more than two individuals per activity who will be trained in emergency purchase procedures, including specifying the limits of their authority. Only authorized personnel will have authority to use emergency purchase procedures and that authority may not be redelegated. A listing of these individuals with signature cards will be maintained in the contracting office.

(b) The maximum dollar limitation for an emergency purchase action, accomplished by authorized activity personnel, will be \$2,500 or less. If an emergency requirement exceeds or is estimated to exceed \$2,500, the activity manager will determine whether the requirement can be postponed until the next business day in order to be processed by the NAF contracting office. If loss or destruction of NAFI property or assets is imminent, the activity manager should attempt to notify the contracting officer, or if not available, the ADCFA, if possible, to advise them of the situation and get authorization to proceed (the nature of the emergency may dictate additional action be taken). Activity managers responsible for acquiring goods or services after the normal duty day, to include weekends and holidays, will obtain funding prior to an acquisition. (See para 3-5c.)

(c) The emergency purchase action must be reported in full detail to the NAF contracting officer not later than 1200 hours the first working day following the emergency action. A completed DA Form 4065-R will be processed with full justification for the emergency action, signed by the individual who place the order. The justification will include reasons why the purchase could not be processed during normal work hours by the contracting office or by the use of normal purchase procedures (for example, BPA calls, orders placed by authorized ordering officers, etc.). A copy of delivery tickets or other documents, identification of the services rendered in detail and the name of the supplier who provided the services or goods will also be included with the justification. The purchase request and supporting documentation is to be hand-carried to the contracting officer so that the transaction may be formalized.

(d) Upon receipt of the purchase request and supporting documentation, the contracting officer will determine that the use of emergency purchase procedures were proper and then prepare a properly executed purchase document in order to formalize the action and allow for payment for services rendered or goods provided.

b. The use of emergency purchase procedures is intended to provide a means for satisfying unforeseeable emergency requirements. It is intended for application when the need will not allow for normal contracting procedures. Prompt formalization of such transactions is required. In the absence of valid emergency criteria and prompt formalization of the purchase, actions will be handled as unauthorized commitments and will be processed per paragraph 1-24 of this regulation.

Chapter 3 Acquisition Planning

Section I Development of the Requirement

3-1. General

a. Acquisition planning is the key to successful development of a requirement and subsequent execution of the procurement. Advance planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the NAFI need in a timely manner and at a reasonable cost. During this process, the needs of the requestor should be developed and specified in a manner which

will promote competition and will ensure that the NAFI receives the best overall value, price and other factors considered.

(1) The acquisition plan participants will include representatives from contracting, fiscal, legal, and technical and activity management areas. The ADCFA is responsible for ensuring that acquisition plans are developed and prepared in order to forecast and identify future requirements. The ADCFA will schedule acquisition planning meetings prior to the beginning of the fiscal year (FY). Acquisition planning meetings may be made part of the CPMC and FY budget process. Contracting personnel shall be involved in all phases of the acquisition process, including acquisition planning.

(2) As part of the acquisition planning process, NAFIs should develop and execute a plan for researching the market as a means of ascertaining information on qualified sources of supply and current state-of-the-art products and services. Researching the market place may range from written or telephone contacts, and may include meetings with Government and non-Government experts. Vendor presentation, trade shows, industry catalogs, and publications may also be utilized in researching products and sources of supply. Vendors from whom such information is solicited shall be advised, without qualification, that any requests for information are for research purposes only, and that any inquiries by the NAFI shall not be construed as a representation in any way that a contract will be awarded. Contracts with vendors must comply with policies established in AR 600-50.

(3) In connection with developing an acquisition plan, as a minimum, the following items should be addressed:

- (a) Determination of funding source.
- (b) Determination of whether to make, lease, or buy (supply-type requirements).
- (c) Determination whether to hire or contract for service-type requirements.
- (d) Standardization of requirements and development of standard specifications (for example, standardize common use items, utilize commercial and industry specification in describing requirements, etc.).
- (e) Determination of quantity, consideration for quantity discounts.
- (f) Identification of quality requirements (for example, methods of ensuring quality assurance and reliability).
- (g) Determination of required delivery date or performance period.
- (h) Consideration of general economic conditions (that is, market stability, seasonal changes, labor market, etc.).
- (i) Evaluation of current market to determine available and qualified sources of supply.
- (j) Consideration of contract action leadtime (CALT) required for accomplishment of the acquisition.
- (k) Determination of the type of requirement (that is, concession, service, consultant, professional, requirements-type, etc.).
- (l) Evaluation of transportation requirements.
- (m) Consolidation of requirements for the same or similar items for better buying power (for example, USACFSC consolidated purchase program (Procurement Calendar), quantity discounts, packaging, etc.).

b. In connection with developing the requirement, milestones should be developed for all major projects. As a minimum, the following items should be addressed:

- (1) Completion of statement of work or development of specifications.
- (2) Completion and submittal of purchase requirement.
- (3) Issuance of synopsis in Commerce Business Daily, if needed.
- (4) Submission for legal review.
- (5) Issuance of solicitation.
- (6) Evaluation of proposals.
- (7) Beginning and completion of negotiations.
- (8) Contract preparation and reviews.
- (9) Contract award.
- (10) Contract administration.

3-2. Determination of requirements

The determination of requirements is the responsibility of the requesting activity or user. It is not a function of contracting personnel. Specifications and purchase descriptions will be as precise as possible without unduly restricting competition.

3-3. Responsibility of the requesting activity

The requesting activity must determine which supplies or services most adequately meet its needs and must clearly define the specifications of the supplies or services on the purchase request. Where technical specifications are required, assistance may be obtained from the contracting office. Purchase requests must be submitted to the contracting office in sufficient time to allow for normal lead time, production time, and delivery of the supplies or services by the required delivery date. It is also the responsibility of the requesting activity to ensure that funds are certified available to make the purchase and to ensure that the purchase request contains all the required signatures. (See app B for approval requirements.)

3-4. Lead time

Requesting activities should make every effort to establish a realistic delivery date in order that the purchase can be properly accomplished. Specific dates will be used for purchase requests. Service contracts that are for continuing periods of time will have the entire time period included in the purchase request.

3-5. Availability, certification of funds, and bulk funding

a. Availability. The availability of funds for a particular contractual action will be ensured either through individual certification (citation on the individual purchase request) or through bulk funding methods. Contracting officers are prohibited from making purchases, when funding is insufficient.

b. Certification. No purchase can be made without a certification that adequate funds will be available for the purchase, to include partial and progress payments, if applicable. If for any reason the originally certified funds become insufficient, additional funds must be certified as available before the contract can be awarded or modified, as appropriate. The original certification of available funds shall be made on DA Form 4065-R. Additional certifications of available funds may be made on a memorandum.

c. Bulk Funding. The bulk funding concept is a system whereby the contracting officer receives the authorization from the certifying official to obligate funds on purchase documents against a specified lump sum of funds reserved for that purpose over a specified period of time, rather than obtaining individual obligation authority on each purchase document. The bulk funding concept enables the contracting officer to make purchases more efficiently. Bulk funding will be used whenever practicable (for example, BPAs, construction projects).

d. Other instruments. Requirements-type contracts, basic ordering agreements (BOAs), and blanket purchase agreements (BPAs) may be established prior to obtaining funding certification; however, orders or calls will not be placed against such contracts or agreements until funds have been certified available.

3-6. Authentication of signature

Procedures will be set up for authenticating the signature of personnel authorized to sign purchase requests (signature cards). In addition, signature cards will also be obtained from ordering officers and BPA callers.

3-7. Specifications and purchase descriptions

a. Specifications are technical in nature and encompass performance and design characteristics. Purchase descriptions are more commercial in nature and describe general characteristics of an item or service. It is not uncommon, however, for purchase descriptions to be referred to as specifications.

b. A thorough description is necessary to acquire the correct item or service, to aid in obtaining competition, and to assist in the determination of a reasonable price. A good purchase description provides the essential physical and functional characteristics of the items or services being requested. These characteristics may include, but are not limited to the following:

- (1) Exact name of the item.
- (2) Model or part number.
- (3) Type and grade of material that the item is made of.
- (4) Electrical data (watts, volts, cycles, phases).
- (5) Dimensions, size, weight, capacity.
- (6) Color.
- (7) Intended use of the item or service.
- (8) Location at which the item is to be used or the service is to be performed.
- (9) Equipment with which the item is to be used or the service is to be performed.
- (10) If a replacement part, the make and model number of the piece of equipment it is to fit.
- (11) Quantity being ordered.
- (12) Delivery date.

c. Specifications should not be so restrictive as to eliminate adequate competition unless it is determined that only one product or service available from a single source will satisfy the needs of the requirement (para 3-10). Since specifications should communicate in terms that both parties understand, industry-developed specifications (such as those established by the National Association of Meat Purveyors) should be used when possible. In the event of a dispute between the contractor and the NAFI concerning ambiguous specifications provided by the NAFI, the ambiguity will usually be construed against the writer of the specifications (usually the NAFI). It is therefore imperative that specifications be clear and that all sections of a contract be consistent with each other in order to effect timely, economical acquisitions.

d. It is essential that suppliers understand exactly what supplies are being ordered or what services are to be performed. If the description provided is incorrect or unclear, the administrative costs of resolving any problems can easily offset any savings from extensive negotiations. The manufacturer's stock number and catalog references should be used when applicable.

3-8. Brand name or equal

a. The brand-name or equal method is another procedure for describing a requirement. It is a procedure by which a commercial product offered for sale to the public is requested by "brand-name or equal", when it is impractical or impossible to prepare a purchase description or specification. The purchase descriptions should set forth those salient characteristics of the brand name product that are essential to the needs of the NAFI. Brand name or equal procurements are not accomplished on a sole source basis. The make or model number of other appropriate nomenclature and all other known acceptable brand name products should be listed as a part of the description.

b. When the term "brand name or equal" is used in a NAF solicitation, the following provision will be used: "BRAND NAME OR EQUAL" (JUN 88).

(1) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Vendors offering "equal" products including products of the brand name manufacturer, other than the one described by brand name, will be considered for award if such products are clearly identified in the offer and are determined by the NAFI to meet fully the salient characteristic requirements referenced in the solicitation.

(2) Unless the offeror clearly indicates in the offer that the offeror is offering an "equal" product, the offer shall be considered as offering a brand name product referenced in the solicitation.

(3) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the NAFI and will be based on information furnished by the offeror or identified in the offer, as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting activity is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting activity. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of the offer, all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to—

(a) Determine whether the product offered meets the salient characteristic requirements of the solicitation, and

(b) Establish what the offeror proposed to furnish and what the NAFI would be binding itself to acquire by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting activity.

(4) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offeror will—

(a) Include in the offer a clear description of such proposed modifications, and

(b) Mark clearly any descriptive material to show the proposed modifications.

(5) Modifications proposed after solicitation opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

3-9. Brand name only

The brand name only method is used when only a particular product, not a substitution, meets the essential requirements of the NAFI. Written justification for purchase of items for other than resale by this method is required from the requesting activity. (See chap 5, sect VII for resale, consumable and subsistence requirements.) However, even a brand name only purchase description allows for the possibility of competition in that it may be able to be procured from sources other than the brand name manufacturer, (e.g., a distributor).

3-10. Sole source

a. *Definition and Authority.* "Sole source" means the purchase of supplies or services available from a single, responsible source. When the supplies or services required by the NAFI are available from only one responsible source, and no other type of supplies or services will satisfy NAFI requirements, competition is not required.

(1) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited proposal (see para 4-42 of this regulation) that—

(a) Demonstrates a unique and innovative concept, or demonstrates a unique capability of the source to provide the particular services proposed.

(b) Offers a concept or services not otherwise available to the NAFI.

(c) Does not resemble the supplies or services of a pending competitive acquisition.

(2) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of equipment, including major components (for example: additional units, replacement items, fleet type requirements or for integration with existing systems) thereof, when it is likely that award to any other source would result in—

(a) Substantial duplication of cost of the NAFI that is not expected to be recovered through competition.

(b) Unacceptable delays in fulfilling the NAFI's requirements.

(3) Services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services, to include professional services, when it is likely that award to any other source would result in—

- (a) Substantial duplication of cost to the NAFI that is not expected to be recovered through competition.
- (b) Unacceptable delays in fulfilling the NAFI's requirements.

(4) When the NAFI's need for supplies or services is of such an unusual and compelling urgency that the NAFI would cease to operate or function unless the NAFI is permitted to limit the number of sources from which it solicits quotes or proposals, competition is not required. The Installation Commander or designee (designee is without power of redelegation), with recommendations from the contracting officer, will make this determination.

b. Application. This authority shall be used, if appropriate, in preference to the authority in paragraph 1–1. However, it shall not be used when any of the other circumstances are applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all-inclusive and do not constitute authority in and of themselves). This authority may be appropriate when—

(1) There is a reasonable basis to conclude that the NAFI's minimum need can only be satisfied by unique supplies or services available from only one source or only one supplier with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or similar circumstances, make the supplies and services available from only one source.

(3) Acquiring electric power or energy, gas (natural or manufactured), water, or other utility services, circumstances may dictate that only one supplier can furnish the service; or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) The contracting officer has determined, in accordance with the NAFI's minimum requirements, that only specified makes and models of technical equipment and parts will satisfy the NAFI's needs for additional units, replacement items, fleet type requirements or for integration of existing systems, and only one source is available.

c. Limitations. Contracts awarded using this authority shall be supported by written justification and approvals.

d. Justifications.

(1) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for competition unless he or she—

- (a) Justifies the use of such actions in writing.
- (b) Certifies the accuracy and completeness of the justification.

(2) Technical and requiring activities are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for sole source.

(3) Each justification shall contain sufficient facts and rationale to justify the use of sole source contracting. As a minimum, each justification shall include the following:

(a) Identification of the NAFI and the contracting activity, and specific identification of the document as a "Justification for Sole Source Contracting".

(b) Nature and/or description of the action being approved.

(c) A description of the supplies or services required meet the NAFI's need (including the estimated value).

(d) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires the use of sole source contracting.

(e) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.

(f) A determination by the contracting officer that the anticipated cost to the NAFI is fair and reasonable.

(g) A description of the market survey conducted and the results or a statement of the reasons a market survey was not conducted.

(h) Any other facts supporting the use of sole source contracting, such as:

1. Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for negotiated competition have not been developed or are not available.

2. An estimate of the cost to the NAFI that would be duplicated and how the estimate was derived.

3. A listing of sources, if any, that expressed, in writing, an interest in the acquisition.

4. A statement of the actions, if any, the NAFI may take to remove or overcome any barriers to competition before any subsequent acquisition for supplies or services required.

5. The contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(i) Each justification shall include evidence that any supporting data that is the responsibility of technical or requiring activities (for example, verifying NAFI's minimum needs or schedule requirements or other rationale for sole source contracting) and which form a basis for the justification have been certified as complete and accurate by the technical or requiring activities. All justification documentation shall become part of the contract file.

e. Sole source procurements. Due to the nature of most NAF activities, it is expected that sole source procurements

will be highly unusual events. The need for procurements using the sole source method can be minimized by proper acquisition planning (see para 3-1).

Section II

Contracting Assistance

3-11. Appropriated fund (APF) contracting office

APF contracting officers are authorized to assist in the obligation of nonappropriated funds. In accomplishing NAF contracts, APF contracting officers will use the procedures set forth in this regulation and any future directive issues by the USACFSC NAF Contracting Office. Contract actions expected to exceed the NAF contracting officer's dollar limitation may be submitted to the servicing APF contracting office for execution. In addition, any complex contract action, regardless of dollar amount, may be forwarded to the APF contracting office if it is beyond the expertise of the NAF contracting officer. (See also para 1-8 *d.*)

3-12. USACFSC NAF contracting office

Requests in excess of, or estimated to be in excess of \$25,000, may also be submitted to a MACOM Centralized NAF Contracting Agency, or to the USACFSC NAF Contracting Office when procurements cannot be accomplished in a timely manner by the servicing APF contracting office. Submissions to the USACFSC NAF Contracting Office must be sent through the respective MACOM and must include a written statement, signed by the Chief of the APF contracting office, to the effect that APF support could not be obtained in a timely or economical manner.

Section II

Purchase Requests

3-13. Initiation of the purchase request

The purchase request begins the acquisition process and provides the contracting officer with documentation to show that funds are available and that all required approvals have been obtained. Specifications, special award factors, or proposal evaluation criteria contained in or accompanying the purchase request must be appropriate to the type of purchase involved in order to avoid unnecessary delays in accomplishing the action. Contracting officers are authorized to accept purchase requests transmitted through the use of electronic transmission equipment, (i.e., electronic mail via modem, facsimile machine), however, a hard copy purchase request with original signatures of approving officials must follow within five days of the transmission.

3-14. Conditions for use

a. DA Form 4065-R will be used for requesting all purchases. DA Form 4065-1-R will be used as a continuation page. Copies of both forms for local reproduction are located at the back of this publication. However, the use of DA Form 4065-R for orders against BPAs should only be used when determined by local policy that the process does not unduly increase administrative costs. It is to be completed by the requesting activity and will have all necessary approval signatures before submission to the contracting office for action. Its use is not required for the request of information or action not involving the expenditure of funds. (See fig 3-1 for sample purchase request.)

b. The contracting officer will review and verify that the purchase request is complete, contains all required signatures, and provides enough descriptive data to make the purchase. If the purchase request is incomplete, it must be returned to the requesting activity within 2 working days for correction of stated deficiencies. Upon receipt of a completed request, the contracting officer will determine the best means of accomplishing the action. Action must be taken on a purchase request within 10 calendar days after receipt in the contracting activity.

Chapter 4

Contracting Methods

Section I

Sources of Supplies and Services

4-1. General

Existing APF or other NAF contracts or agreements may be used in the purchase of items or services, provided the terms of such contracts or agreements permit their use, unless better advantage can be secured in the open market. Government sources include, but are not limited to, General Services Administration (GSA), commissary store, and Defense Supply Depots. Other NAF sources include, but are not limited to, Army and Air Force Exchange Service (AAFES), Navy Resale System Office, and Marine Corps Exchange System. When a NAFI procures goods and

services from a Government or other NAF source, contracting officers may use contracting forms designated by these agencies.

4-2. Federal Prison Industries (FPI) and the Industries for the Blind and Other Severely Handicapped

The procedures of FAR Subparts 8.6 and 8.7, which require (with limited exceptions) the purchase of specified supplies from Federal Prison Industries, Inc. (FPI), and from the Blind and Other Severely Handicapped are applicable to NAF acquisitions.

4-3. Contracting with Government and NAFI employees and employee-controlled organizations

a. NAF contracting officers are prohibited from awarding a contract to any Government or NAFI employee, either civilian or military or to any organization substantially owned or controlled by one or more Government or NAFI employees. An exception to this rule may be granted if—

(1) The NAFI needs cannot otherwise be met or some other compelling reason exists.

(2) The exception is approved by the installation commander or designee (designation of this approval authority may not be made below the level of the Director of Personnel and Community Activities (DPCA) responsible for the NAFI).

b. This policy is intended to avoid any conflict of interest that might arise between the employee's interests and their official duties and to avoid the appearance of favoritism or preferential treatment by NAFIs toward their employees.

4-4. Source lists

Various source lists are available to the NAF contracting officer. Among them are solicitation mailing lists developed and maintained by the contracting office. The SF 129 (Solicitation Mailing List Application) may be used for this purpose. The use of synopses in the Commerce Business Daily (para 4-6) will aid in the development of these mailing lists.

4-5. Debarred, suspended, proposed for debarment and ineligible contractors

a. Active and potential contractors, vendors, suppliers, business firms, individuals, and their representatives doing business with NAFIs, whose actions make it necessary, will be suspended and debarred under the same policies and procedures as appropriated fund contractors. See FAR subpart 9.4, DFARS subpart 209.4 and AFARS subpart 9.4. Bids, proposals, or quotations will not be solicited and no contract will be awarded to or purchase made or consent to subcontract given to firms and individuals named in the GSA Lists of Parties Excluded from Federal Procurement or Non-procurement Programs, unless the Secretary concerned or his/her authorized representative determines it to be in the best interest of the Government or NAFI to make an exception for a particular contract action.

b. The NAFI's interests will be protected when subcontracting with contractors debarred, suspended or proposed for debarment. The NAFI will recommend suspension or debarment on contractors in order to protect the NAFI's interests. Contractors shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor who has been debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended or proposed for debarment (see FAR 9.404 for information on the list of parties excluded from procurement programs), a corporate officer or designee of the contractor shall notify the contracting officer, in writing, before entering into such subcontract. The notice must include the following:

(1) The name of the subcontractor.

(2) The contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor, notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement of Nonprocurement Programs.

(4) The controls and procedures the contractor has established to ensure that it is fully protecting the NAFI's interest when dealing with such subcontractor, in view of the specific basis for the party's debarment, suspension, or proposed debarment.

c. The NAFI may obtain a subscription for the List of Parties Excluded from Federal Procurement or Nonprocurement Programs from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Order and Inquiry Desk at (202)783-3238.

4-6. Synopsizing

Synopsizing acquisitions, in the Commerce Business Daily, is a method by which NAF contracting officers may locate additional sources. Synopsizing of NAF requirements is not mandatory. However, the contracting officer may synopsize when determined that it is necessary to obtain additional sources to ensure adequate competition. The procedures for preparation of and printing of synopses as outlined in appendix D will be followed when synopsizing NAF requirements.

Section II

Small Purchases

4-7. General

a. A small purchase is a purchase of supplies, services and construction costing \$25,000 or less (\$50,000 for resale). Small purchase procedures simplify the purchasing action and reduce administrative costs. These purchases may be made by the use of established NAF contracts, agreements, GSA contracts, other military services contracts (these sources of supply are not mandatory for use by NAFIs, unless specifically stipulated in the contract), and the open market.

b. Purchases made in the open market will be made by the most efficient and economical method best suited to the immediate needs of the requesting activity. In addition, the following guidance will be adhered to:

- (1) All supplies or services that can be combined into a single transaction will be consolidated.
- (2) In purchases where similar items have been combined, award may be made on the lowest total quotation rather than the lowest quotation for each item.
- (3) Contracting activities will advise suppliers as to whether the “all-or-none” or multiple award procedure is being used.
- (4) Under no circumstances will a requirement be split in order to avoid small purchase limitations or competition requirements.

4-8. Fair and reasonable price determination

a. A fair and reasonable price determination is based on the following considerations:

- (1) The quoted price is acceptable to the buyer and to the seller.
- (2) The quoted price of the goods or services being purchased is not more than the current market value. (The price paid for the same goods or services in previous purchases may not reflect the current market value.)
- (3) The quoted price is not excessive for the time that delivery is required or the service is performed. For example, the offeror may have added a charge for accelerated delivery to the basic cost of the items in order to meet delivery requirements; such a quote, while apparently high, may be the most reasonable.
- (4) The cost of administering the purchase is not excessive (para 4-33).

b. If the price difference among responses is such that a lack of true competition is reflected, a statement will be included in the purchase file establishing the basis on which a determination of fair and reasonable price was made. When only one quotation is received, a written memorandum will be included in the file explaining the reason for the absence of competition.

c. Contracting personnel will obtain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased to aid in determining price reasonableness. Administrative cost associated with the NAFI's accomplishment of the procurement should be weighted in conjunction with base price to determine reasonableness.

4-9. Oral solicitations

Except as provided in paragraph 4-10, price quotations may be solicited orally. The contracting office will establish and maintain records of oral price quotations in order to reflect clearly the basis of placing the order at the price paid with the supplier concerned. These records will consist of the names of the suppliers contacted, the names of the persons quoting, the prices, and other terms and conditions quoted by each. Oral solicitations will be documented on DA Form 5567-R (Army NAF Solicitation Abstract Form (Nonappropriated Fund)). (See sample DA Form 5567-R at fig 4-1.)

4-10. Written solicitations

a. Generally quotations should be solicited orally, however written solicitations will be used for—

- (1) Construction contracts in excess of \$2,000.
- (2) Proposed service type contracts in excess of \$2,500.

b. Written solicitations may be used when—

- (1) A large number of line items is included in a single proposed acquisition, or involves drawings and/or detailed specifications.
- (2) Obtaining oral quotes is not considered economical or practicable (some companies will not quote prices orally and written solicitations are appropriate under these circumstances.)
- (3) The suppliers are located outside the local trade area.

c. Since AAFES and other Government sources of supply are not required to respond to written solicitations, their quoted offers should be solicited by letter or telephone.

d. Published price lists, such as those provided with a vendor's catalog (less any applicable discounts) are considered to be written quotes. However, contracting personnel should ensure that price information is current and NAFI obtains the benefit of applicable discounts. The availability of such price lists, even though considered to be a written

quote, does not preclude summarizing this information on DA Form 4072-R (Record of Negotiations Nonappropriated Funds). DA Form 4072-R will be locally reproduced on 8½- by 11-inch paper. A copy for local reproduction is located at the back of this book.

4-11. Request for quotations

a. General. A request for quotations (RFQ) is a written solicitation for the primary purpose of gathering pricing and delivery data for a future purchase of standard commercial goods or services.

b. Conditions for use. A RFQ may be used at any time, regardless of the estimated dollar amount of the anticipated purchase. It is most often used for informational purposes, i.e., price, delivery or other market information. A RFQ may not be used solely to obtain pricing, when a contractor's catalog will provide the same information. A reasonably firm requirement is needed before a RFQ can be issued.

c. Legal effect of quotations. A quotation is not an offer and cannot be accepted by the NAFI to form a binding contract. Issuance by the NAFI of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the NAFI to the supplier to buy certain supplies or services upon specified terms and conditions and becomes a contract when the supplier accepts the offer.

(1) When the NAFI issues an order, the contracting officer may request the supplier to indicate acceptance by notification to the NAFI, preferably in writing. The supplier may also indicate acceptance by furnishing the supplies or services ordered or by starting performance of the work.

(2) If the NAFI issues an order resulting from a quotation, the NAFI may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer.

d. Preparation of the RFQ. The RFQ will be issued on DA Form 4067-R as follows:

(1) Check the block marked Request for Quotation and fill in the PIIN (para 2-1). The next blank refers to the date that the RFQ must be returned to the issuing office and not the method of transport. Normally, 20 or 30 days are allowed for the vendor to respond.

(2) Block 1: Enter NA.

(3) Block 2: Enter NA.

(4) Block 3: Enter the date the RFQ is issued.

(5) Block 4: Enter the purchase request number.

(6) Block 5: Enter the name, address and telephone number of the office issuing the RFQ.

(7) Block 6: Enter NA.

(8) Block 7: Enter the name, mailing addresses and telephone number of the vendor to whom the RFQ is to be sent.

(9) Block 8: Enter the date on which delivery or performance is required.

(10) Block 9 and 10: Vendor is to complete these blocks.

(11) Block 11: Enter the name and complete address of the activity that will receive the shipment of supplies or the performance of services.

(12) Block 12: Enter the complete address and telephone number of the accounting or disbursing office that will issue the payment check.

(13) Blocks 13 and 14: Enter NA.

(14) Block 15a: Vendor is to complete the block.

(15) Block 15b: Enter NA.

(16) Blocks 16 through 21: Insert a statement to this effect:

"This is a request for quotations and does not constitute an order (see Schedule, page 2, DA Form 4068-R). Your point of contact for this RFQ is Mr./Ms. _____, tel.: _____."

Note: Line items on the Schedule are listed in the same manner as on purchase and delivery orders. The vendor is to insert prices.

(17) Block 22: Vendor is to complete this block.

(18) Blocks 23 and 24 are not applicable.

e. The schedule, contract clauses, and special contract requirements. DA Form 4068-R (Continuation Sheet (Nonappropriated Funds)) will be used as the continuation sheet for the schedule of supplies or services. DA Form 4068-R will be locally reproduced on 8½- by 11-inch paper. A copy for local reproduction is located at the back of this book. If more space is required for schedule information, other continuation sheets or plain white paper may be used. Appropriate contract clauses and special contract requirements are to be inserted following the schedule. Special contract requirements may be applicable to an individual purchase. These are not contained on pre-printed forms and must be inserted by the contracting officer.

f. Cover letter. Since a RFQ cannot create a binding contract, it will not be signed before sending it to a vendor. However, there should be an accompanying letter signed by the contracting officer, clearly explaining the intent of the RFQ. The letter should define what information is needed, instruct the vendor in procedures for returning the RFQ to the issuing office, and state the date that the RFQ is due back in the issuing office.

g. Distribution. The original and one copy of the RFQ, with contract clauses attached will be sent to each vendor. A

copy of the RFQ will be retained in the contracting office file. The original copy, once completed by the vendor will be returned to the issuing office. A copy of the RFQ may be furnished to the requesting activity.

h. Amendments. Amendments will be made on DA Form 4073-R. All amendments are to be sent to the same vendors to whom the initial RFQ was sent. The amendment must state that addressees will acknowledge receipt of the amendment and that the quotations must be based on the amended RFQ. If a continuation sheet is needed, plain white paper may be used.

i. Evaluation. The responsibility for evaluating quotations lies with the contracting officer. Evaluation is discussed in paragraph 4-33.

j. Award.

(1) After evaluation of responses to a RFQ, a purchase order may be issued to effect a binding contract, or the contracting officer may issue a RFP. In the former instance, since the purchase order is an action separate from the RFQ, a new DA Form 4067-R will be initiated. When issuing the order, only the DA Form 4067-R and the schedule need to be mailed. Instructions to the offeror, special contract requirements, and contract clauses do not have to be attached, provided the following statement is printed on the schedule:

"All other terms and conditions of RFQ #_____ remain in full force and effect."

(2) Procedures for preparing the purchase order form are in paragraph 4-14 and procedures for distribution are in paragraph 2-5.

4-12. Blanket Purchase Agreements (BPAs)

a. General. Blanket Purchase Agreements (BPAs) provide a simplified method of making small purchases in the open market. By establishing a "charge account" with a vendor, they eliminate the need for the repetitive issuance of individual purchase orders, thus reducing administrative costs. They have the effect of a charge account but they are not binding contracts and do not obligate the NAFI to purchase the supplies or services named in the agreement.

b. Conditions for use. BPAs may be issued when there is a repetitive need for the purchase of small quantities of similar supplies or services and when the use of such a purchase instrument would be more economical than other small purchase methods.

c. Restrictions. BPAs may not be established for purchases of supplies or services that require the use of unpriced purchase orders. (See para 4-15.) Items identified as capital purchases and minor construction (CPMC) are not to be purchased using BPA procedures.

d. Responsibilities of the contracting officer. The contracting officer has the responsibility for—

(1) Determination of need. NAFI contracting officers should periodically review purchase order files to identify those orders for supplies or services that could be more efficiently managed by the use of BPAs. This determination should be documented in writing and placed in the blanket purchase agreement file. Since this determination is made in the contracting office, there is no requirement for the issuance of an Army NAF Purchase Request to establish a blanket purchase agreement.

(2) Appointment of BPA callers. NAFI contracting officers are responsible for appointing certain individuals as BPA callers who are authorized to place calls against the blanket purchase agreement. Before making the appointment, the contracting officer will make a written determination that the appointment is essential and that the person appointed possesses a high degree of integrity and is capable of performing the action in an efficient and business-like manner. A separate file should be established for the appointment of BPA callers and this written determination must be included in the file. Appointments of BPA callers must be in writing and must specify the maximum dollar limitation on calls that they are authorized to place against the agreement as well as the number of the agreement. The placement of individual calls in excess of \$2,500 but not more than \$25,000 (\$50,000 for resale) will be limited to contracting officers acting within the limits of their authority. BPA callers may be appointed to place individual BPA calls of \$2,500 or less for supplies and nonpersonal services.

(3) Surveillance. The NAFI contracting officer is also responsible for ensuring that correct blanket purchase agreement procedures are being followed. To do this, the contracting officer must, as a minimum—

- (a) Instruct the BPA callers in the proper use of the blanket purchase agreement.
- (b) Furnish a copy of the agreement and any applicable price lists to each BPA caller.
- (c) Ensure that calls are being equally distributed among suppliers of similar items with whom BPAs have been established.
- (d) Ensure that BPA callers do not split purchase transactions to avoid monetary limitations.
- (e) Ensure compliance with this regulation and monitor the need for retention of BPA callers.
- (f) Inform suppliers of the names of individuals authorized to place calls.

4-13. Preparation and issuance of BPAs

The contracting officer has the responsibility for preparation and issuance of BPAs.

a. BPAs will be distributed equally among qualified suppliers primarily on the basis of price, offered discounts and the supplies or services available. Concurrent agreements with several suppliers of similar items or services are advisable in order to properly rotate calls among them when competition is not required. Agreements are normally

issued for an indefinite period of time, but a time period may be specified if that is considered appropriate. Since they are typically for an indefinite period of time, they are usually not fixed price agreements. A blanket statement that funds in a specified amount will be available for a specified period of time must be obtained from the NAFI certifying official before any orders are placed against a blanket purchase agreement. This certification may be made on a memorandum. (See para 3-5 c .)

b. BPAs will be issued on DA Form 4067-R (Order for Supplies or Services/Request for Quotations (NAF). DA Form 4068-R (Continuation Sheet NAF) or plain bond will be used for the inclusion of the special provisions as defined in a d below. DA Form 4074-R will be the final attachment to the agreement.

c. BPAs will be assigned a procurement instrument identification number in accordance with paragraph 2-1. The PIINs assigned will be consecutive and maintained in a separate document register.

d. It is not mandatory that NAF BPAs cite specific accounting data and negotiation authority. However, these references may be included if it is considered to be appropriate. It is mandatory that the following provisions be incorporated:

(1) *Authorization*. The agreement must authorize the supplier to furnish the supplies or services described within the agreement, whether in general or specific terms. The agreement may limit the supplies, services or calls for all supplies or services that the supplier is able to furnish.

(2) *Pricing*. A statement that the prices charged to the NAFI must be as low as or lower than those charged to the supplier's most favored customer.

(3) *Obligation to the NAFI*. A statement that the NAFI is obligated only for authorized calls placed against the agreement by authorized personnel named in the agreement.

(4) *Amount authorized*. A statement that no individual call will exceed \$25,000 (\$50,000 for resale.)

(5) *BPA callers*. A list of all persons authorized to place calls against the agreement, the dollar limitation per call for each individual, and the name and location of the office in which they work.

(6) *Delivery tickets*. A statement will be included that all shipments will be accompanied by delivery tickets in triplicate (quadruplicate for subsistence items). Delivery tickets, to be prepared by the vendor, must include the following:

(a) The name of the supplier.

(b) The blanket purchase agreement number.

(c) The date of the call and call number.

(d) An itemized list of the supplies or services furnished.

(e) The quantity, units price and extended (total) price, less applicable discounts.

(f) The date of the delivery or shipment. Upon delivery, receiving personnel are to sign all three copies of the ticket noting any shortages or damages. When damages or shortages occur, the delivery truck driver must also initial all tickets. A statement will also be included in the blanket purchase agreement specifying that two copies of the ticket will be retained by the receiving office; and one will be retained by the driver. For subsistence items, four copies of the delivery ticket are required so that a copy is also provided to the Veterinary Service inspector.

(7) *Place of delivery*. Addresses of delivery points and any delivery instructions will be included in the agreement. It is permissible to include a provision that the supplies may be picked up at the vendor's location if this is determined to be in the best interest of the NAFI.

(8) *Invoicing*. A statement will be included that itemized invoices are to be submitted to the servicing accounting office in triplicate at least once monthly.

(9) *Distribution*. Three unsigned copies of the agreement will be sent to the supplier for signature. When these signed copies are returned to the contracting office, the contracting officer will sign all three. See paragraph 2-5 for distribution after signature.

(10) *Call procedures*.

(a) Calls placed against blanket purchase agreements will be made only by authorized individuals and will not exceed the dollar amount of the orders they are authorized to place. For orders of \$2,500 or less for supplies and nonpersonal services, calls must be rotated among suppliers. The existence of a blanket purchase agreement does not eliminate the requirement to obtain competition for orders exceeding \$2,500.

(b) BPA callers will—

1. Not redelegate their authority to someone else.

2. Assign a separate call number for each order placed. This will be an alphanumeric number beginning with the letter designation for the activity placing the call and ending with a sequential number assigned to the individual call, such as A-0001, A-0002, etc. Sequential numbers will be maintained on a fiscal year basis and will start over at the beginning of each fiscal year. Contracting officers will assign the letter designation for each activity.

3. Ensure that the item being ordered is authorized under the agreement and the item is available.

4. Identify himself or herself to the vendor, provide the vendor with the blanket purchase agreement number and call number, verify the price of the item, and provide delivery instructions.

5. Enter the date of the call, the call number, the amount of the call, and his or her name on a call record, which

should be similar to the format shown in figure 4-2. At the end of the month, or at the end of each billing cycle, each BPA caller will forward the original signed call record to the central accounting office. Original delivery tickets are to be submitted to the central accounting office within 2 working days, per AR 215-5, paragraph 5-3. At the end of each month, one legible copy of the call record and a copy of the vendor's delivery ticket(s) will be forwarded to the BPA contracting officer to be retained in the BPA file. The BPA caller will also retain a copy of each call record, delivery tickets, and any other call documents for the BPA caller's files at the activity. An aggregate purchase order covering all the calls made during that monthly period is not necessary. The signed call record and signed delivery tickets will provide sufficient documentation for payment purposes.

(11) *Modification.* Addition or deletions of BPA callers, changes in delivery points, and any other change that affects the terms and conditions of the blanket purchase agreement must be accomplished as a supplemental agreement (see para 7-4).

(12) *Review procedures.*

(a) The BPA contracting officer or the designee will review the BPA callers BPA files at least semiannually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA will—

1. Ensure that each BPA is reviewed at least annually and, if necessary updated at that time.
2. Maintain awareness of changes in market conditions, sources or supply, and other pertinent factors that may warrant making new arrangements.
3. If an office other than the contracting office that established a BPA is authorized to make purchases under the BPA, the agency that has jurisdiction over the office authorized to make the purchases will ensure that the procedures in paragraph (a) above are being followed.
4. A checklist similar to the format shown in figure 4-3 will be used to accomplish the review.

4-14. Purchase orders

a. *General.* A purchase order (PO) is a purchase instrument issued on DA Form 4067-R, or DA Form 4067-1-R for purchases of \$10,000 or less, for the future delivery of supplies, or for the future performance of nonpersonal services. The DA Form 4067-1-R will not be issued as a purchase order with foreign vendors or as a delivery order. The contracting officer will incorporate all contract clauses required for or applicable to the particular acquisition. POs obligate the NAFI to pay the contractor the amount stated on the purchase order, if the contractor performs in accordance with the terms and conditions of the purchase order. DA Form 4067-R and DA Form 4067-1-R will be locally reproduced on 8½- by 11-inch paper. Copies for reproduction purposes are located at the back of this issue. Figures 4-4 and 4-5 are samples of a competed DA Form 4067-R used as a purchase order.

b. *Unilateral purchase orders.* A unilateral purchase order is one that is signed only by the NAF or APF contracting officer. It constitutes an offer by the NAFI to pay for the future delivery of supplies or performance of nonpersonal services and does not require written acceptance of the supplier. It gives the NAFI the opportunity to cancel the order at any time before the initiation of performance by the contractor without liability to the NAFI. It does not, however, create a contract nor ensure that the supplier will perform in accordance with the terms of the order. When a unilateral order is placed with a vendor orally, a written order will be prepared and annotated "CONFIRMING ORDER. DO NOT DUPLICATE," in order to avoid duplicate shipments (see para 7-7).

c. *Bilateral purchase orders.* A bilateral purchase order is one that is signed by both the contracting officer and the contractor. It creates a binding contract between the NAFI and the contractor and cannot be changed or canceled without a written modification.

d. *Distribution of purchase orders.* See paragraph 2-5.

e. *Modifying the purchase order.* DA Form 4073-R (Amendment of Solicitation/Modification of Contract (Nonappropriated Funds)) will be used to modify the purchase order. Administrative changes (such as changes in accounting data) that do not change the items or services ordered, the delivery date, or the cost of the items, require only the contracting officer's signature. The same is true of change orders invoked under a bilateral purchase order. The changes that can be invoked under the Change clause vary, depending on whether the contract covers supplies, services vary, depending on whether the contract covers supplies, services or construction. Any changes not listed in the Changes clause constitute a supplemental agreement and the modification must be signed by both the contracting officer and the contractor.

f. *Withdrawal, cancellation, and termination of purchase orders.*

(1) A purchase order that the vendor has not accepted in writing may be withdrawn or canceled at any time prior to the time the vendor initiates performance. Since the vendor can begin performance without the knowledge of the contracting officer, the contracting officer should check the status of performance with the vendor before deciding what action to take. If performance has not been initiated, the contracting officer may cancel the purchase order by means of a written notice to the vendor. The vendor's signed acknowledgement of notice should be obtained.

(2) If the vendor has begun performance or has accepted the purchase order in writing, the termination notice must be in writing, and must contain the signatures of both the contracting officer and the vendor. Such terminations can be made under the appropriate termination clauses, depending upon the circumstances. The vendor should be asked to

agree to the termination without cost or liability to either party. Terminations require legal review whether the vendor accepts or rejects the terms. If the vendor rejects them, no further action should be taken without additional legal advice.

4–15. Unpriced purchase orders

a. An unpriced purchase order is an order for supplies or nonpersonal services, the price of which is not established at the time of issuance of the purchase order. Unpriced purchase orders will be executed using the DA Form 4067–R.

b. Unpriced purchase order procedures will not be used when the exact price of an item or service is available. The procedures will only be used if the following conditions exist:

(1) The total anticipated (or actual) price of the transaction will not exceed the small purchase dollar limitation. (See para 1–6*h*.)

(2) It is impractical or impossible to obtain exact prices in advance of issuing the purchase order.

(3) If the purchase is for—

(*a*) Repairs to equipment requiring disassembly to determine the nature and extent of such repairs. An example of this would be the requirement to dismantle an automobile engine before an accurate price could be assessed for repairs.

(*b*) Single source material for which the cost cannot be readily established. An example of this would be an out-of-production item. The exact price could not be determined until production actually begins.

(*c*) Supplies or nonpersonal services where prices are known to be competitive but exact prices are not known. An example of this would be where several companies can perform a repair job, but none can give an exact price until the work actually is in progress.

c. Procedures for use are as follows:

(1) *Source selection.* Suppliers must be carefully selected to avoid the possibility of too high a price being paid for goods or services purchased through unpriced purchase orders. Since exact prices cannot be obtained before issuing the order, the requirements for competition cannot be followed in the same manner as for other small purchase methods. If the anticipated dollar value of the order is in excess of \$2,500, the contracting officer should attempt to secure several estimates from qualified sources and award the purchase order to the lowest estimate. This may not be practicable or economical if the required item/service is of an emergency nature. The file should be documented to describe the nature of the emergency.

(2) *Cost limitation.* A realistic monetary limitation, either for each item or the total order, will be placed on the unpriced purchase order. This estimated price is subject to adjustment when the actual firm price is established.

(*a*) Every unpriced purchase order must contain this Notice to Supplier Clause. This clause puts the supplier on notice that the cost limitation shown in the Schedule is not to be exceeded. If the supplier cannot perform within that limitation, performance is to be withheld and immediate notification given to the contracting officer of a price at which the contract can be performed.

“NOTICE TO SUPPLIER. This is a firm order only if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the contracting officer. If you cannot perform in exact accordance with this order, withhold performance and notify the contracting officer immediately, giving your quotation.”

(*b*) The contracting officer has two choices once informed by the vendor that the purchase order cannot be performed within the price limitations imposed in the Schedule. First, the contracting officer may approve the higher price quoted and issue a modification to reflect the firm quoted price, but only after receiving the necessary funding certification from the requiring activity. Second, the contracting officer may cancel the order and have the supplier submit an invoice for services performed to that point and solicit another source.

(3) *Payment.* The contracting officer or contracting officer’s designated representative will review all invoices submitted for payment under an unpriced purchase order to determine if the invoice is fair and reasonable. If the invoice is reasonable, it will be forwarded to CAO and processed for payment. One copy of the invoice will be placed in the purchase order file.

d. Teardown and quote procedure is a variation to the use of unpriced purchase orders. The use of this procedure requires additional paperwork but provides for better control of unpriced purchase orders. The procedures for teardown and quote are as follows:

(1) *Issue unpriced purchase order.* An unpriced purchase order is issued for tearing down and determining the extent of damage of the item only. Once this is accomplished, the contractor gives an exact price quote only for the cost of repairing the piece of equipment and quotes a firm price for the teardown procedure performed and proceeds no further.

(2) *Satisfactory price quote.* After the contractor tears the item down, he or she will quote a firm price for the necessary repair work. If the quoted price is considered to be fair and reasonable, the contracting officer will modify the purchase order to include the repair costs.

(3) *Unsatisfactory price quote.* If the price quoted for repairs is not considered to be fair and reasonable, the contracting officer will seek competition and award the repair portion of the purchase order to another contractor.

(4) *Limitations.* The teardown and quote procedure is basically limited to repairs performed at Government installations. Repairs will not be performed at a contractor's facility, when using the teardown and quote procedure.

4-16. DA Form 4066-R (Purchase Record-Invoice-Voucher (Nonappropriated Funds))

a. DA Form 4066-R is a pocket-sized purchase order form designed for on-the-spot, over-the-counter purchase of supplies, and nonpersonal services. DA Form 4066-R will be locally produced. A copy for local reproduction is located at the back of this book. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher. Since this form does not contain any of the contract clauses normally attached to purchase orders, it must be used with extreme caution and not used as a standard replacement for DA Form 4067-R.

b. Contracting officers and duly appointed ordering officers are authorized to use the DA Form 4066-R, only when ALL of the following conditions are satisfied:

- (1) The supplies or services are immediately available.
- (2) The amount of the purchase will not exceed \$1,000.
- (3) One delivery and one purchase will be made.
- (4) The supplies or services purchased do not require technical inspection.
- (5) Its use is determined to be more economical and efficient than use of other small purchase methods.

c. Pursuant to paragraph 1-6, ordering officers may be appointed by the contracting officer at remote locations outside the installation to make over-the-counter purchases utilizing DA Form 4066-R for supplies and nonpersonal services when the conditions in *b* above are satisfied. A remote location is one at an installation/activity other than where the contracting officer is established and which is so distant that transactions between the two locations are impracticable.

d. DA Form 4066-R will be completed as follows:

- (1) In the block entitled "Date of Order", enter the date of performance or delivery by the supplier.
 - (2) Insert the PIIN of the order in the order number block. See paragraph 2-1 for detained information on PIINS.
 - (3) In the block entitled "Print Name and Address of Seller", the supplier's company name and complete address are to be inserted.
 - (4) In the block entitled "Furnish Supplies or Services to", insert the name and complete address of the ordering activity.
 - (5) The supplies or services, quantity, unit price, and amount are to be listed accurately and completely.
 - (6) In the block entitled "Agency Name and Billing Address", insert the name and complete address of the accounting or disbursement office will will issue the payment check.
 - (7) Enter any prompt payment discount terms offered by the supplier in the block entitled "Discount Terms".
 - (8) In the block entitled "Ordered by" the individual who places the order will print and sign his or her name and enter the date.
 - (9) In the block entitled "Purpose and Accounting Data ", the number and date of any purchase request authorizing the purchase and any applicable accounting data will be inserted.
 - (10) In the block entitled "Received By", the person receiving the supplies will enter his or signature, and the date.
 - (11) The ordering individual will enter the amount paid in the "Seller Received" block and the payment requested in the block with that title, and then obtain the seller's signature.
 - (12) The remaining blocks are to be completed by the servicing central accounting office.
- e.* Distribution of DA Form 4066-R is to be made in accordance with the instructions on the reverse of the form.

4-17. Delivery orders

a. General. A delivery order is an order for the future delivery of supplies or nonpersonal services, placed against an existing contract or agreement, and issued on a DA Form 4067-R. It may be used for orders of any dollar amount, and is binding upon issuance (date of mailing). It obligates the NAFI to pay the contractor the amount on the delivery order, if it is placed in accordance with the terms and conditions of the basic contract, and if the contractor performs per the terms and conditions of the contract, specifically—

(1) Delivery orders may also be placed against existing competitively-awarded contracts and agreements authorizing NAFIs to place delivery orders.

(2) Delivery orders may also be placed against existing non competitively awarded contracts and agreements when requirements set forth in paragraph 1-11 are met.

(3) Contract clauses are not used with delivery orders, since they are already contained in the existing contract or agreement. Figures 4-6 and 4-7 are examples of a completed DA Form 4067-R as a delivery order.

(4) Delivery orders have no dollar limitation other than the following:

- (a) Availability of funds.
- (b) Limits established by the installation commander or designee.
 - (1) Limits established by the basic contract or agreement (para 1-6).

b. Distribution of delivery orders. See paragraph 2-5.

c. Modifying the delivery order. DA Form 4073–R will be used to modify the delivery order. The procedures that apply to modifications of purchase orders (para 4–14e) apply here also.

d. Withdrawal and termination of delivery orders. The contracting officer may terminate a delivery order using the procedures for termination of purchase orders (para 4–14f). The contracting officer on the delivery order may not, however, terminate the contract against which the delivery order was placed, if the contract is administered by another contracting officer.

4–18. Advance payments

a. Advance payments may be provided on any type of contract. However, the authorizing official will authorize advance payment sparingly. Advance payment is the least preferred method of contract financing and will not be authorized if other standard payments (partial, progress, and payment on receipt) procedures are available. If the terms of the sale requirement advance payment, the authorization for such a payment must be obtained in writing from the NAFI fund manager before the purchase is made. (See para 7–10.)

b. Orders for subscriptions to periodicals for which advance payment may be authorized will contain the following statement: “Contractor’s invoices must be submitted before payment can be made. Contractor will be paid on the basis of the contractor’s invoice which must state the starting and ending dates and must indicate that orders have been placed in effect for the addresses required, or that the orders will be placed in effect upon receipt of payment.”

4–18.1. Advance checks

a. When contract terms require immediate payment upon receipt of goods or services, advance checks may be issued and picked up from the central accounting office (CAO) by the NAFI activity representative as specified in the contract. Advance checks will not be issued to the contractor until full and satisfactory completion of contract requirements.

b. Issuance of advance checks to authorized NAFI personnel for release to contractors upon completion of contract is not considered advance payment (see para 4–18).

4–19. Notification to unsuccessful offerors

For small purchases, it is not necessary to notify unsuccessful offerors unless they request it. Unsuccessful offers may be given the name of the successful offeror and the contract price, including discount terms. Other information may be in violation of the Privacy Act of 1975, 5 USC 552a, and therefore should not be released without first coordinating with the installation legal advisor. Information that is requested under the Freedom of Information Act should be handled in accordance with AR 340–17.

Section III

Negotiation

4–20. General

Negotiation is a flexible contracting procedure that permits contracting personnel to bargain in the sense of discussion, persuasion, clarification of initial assumptions and positions, and give-and-take. These discussions may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

4–21. Conduct of negotiations

a. The contracting officer may conduct written or oral discussions with all reasonable officers who submit proposals within the competitive range. The content and extent of the discussions will be determined by what the contracting officer decides is appropriate. In conducting these discussions, the contracting officer will—

- (1) Control all discussions.
- (2) Inform the offeror of any noted deficiencies and give the offeror an opportunity to correct them.
- (3) Attempt to clarify ambiguities in the proposal.
- (4) Resolve suspected mistakes.
- (5) Give the offeror an opportunity to make any necessary revisions to the proposal.

b. The contracting officer will exercise caution and good judgment in ensuring that the following do not occur during these discussions:

- (1) Releasing technical information relating to one proposal that could result in the improvement of a competing proposal.
- (2) Informing the offeror of a price that must be met before the offer can be considered.
- (3) Informing an offeror of how one’s price compares to that of another offeror (this does not preclude merely informing an offeror that the offered price is “too high”).
- (4) Furnishing any information about other offerors’ prices.
- (5) Assisting an offeror in improving his or her proposal.

4-22. Request for proposals

a. A request for proposal (RFP) is the instrument by which negotiated acquisitions are initiated. A RFP is a written solicitation that provides a potential contractor with the opportunity to offer a price and a plan for accomplishing a particular acquisition. RFPs are used in negotiated acquisitions to communicate NAFI requirements to prospective contractors and to solicit proposals in meeting these requirements. RFPs will contain the information necessary to enable prospective contractors to prepare proposals properly. Solicitation provisions and contract clauses will be incorporated into the solicitation. The DA Form 4069-R (Solicitation, Offer and Award (Nonappropriated Funds)) will be used as a request for proposal. A proposal received in response to a RFP is an offer that can be accepted by the NAFI to create a binding contract following negotiations. DA Form 4069-R will be locally reproduced on 8½- by 11-inch paper. A copy for local reproduction purposes is located at the back of this book.

b. By contrast, an invitation for bid (IFB), using sealed bid procedures, furnishes a plan and potential contractors provide only prices. With an IFB, there is no opportunity for the bidder to negotiate the terms of the deal and no deviations from the terms of the IFB are allowed.

4-23. Conditions for use

Contracting officers should normally issue RFPs when they expect a reasonable number of responses from prospective contractors. A RFP may be used for purchases under small purchase limits when the contracting officer determines this method to be to the best advantage of the NAFI. Since AAFES and other federal entities are not authorized to respond to formal solicitations, their offers should be solicited by letter or telephone. A RFP will not be used for a solicitation for information or planning purposes.

4-24. Preparation

a. Contracting officers will prepare solicitations and resulting contracts using the uniform contract format outlined below. The format below will aid in preparation of the solicitations and contracts. It also references the use of those documents by offerors and contractors.

b. Solicitations will include Parts I, II, III and IV of the Uniform Contract Format. Upon award, the contracting officer will not physically include Part IV in the resulting contract. Representations, certifications and other statements of offerors, as completed by the contractor, will be retained in the contract file.

Table 4-24
Uniform Contract Format

Section	Title
Part I—The Schedule	
A	Solicitation/contract form
B	Supplies or services and prices/costs
C	Description/specification/work statement
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
Part II—Contract Clauses	
I	Contract clauses
Part III—List of Documents, Exhibits, and Other Attachments	
J	List of attachments
Part IV—Representations and Instructions	
K	Representations, certifications, and other statements of offerors
L	Instructions, conditions, and notices to offerors
M	Evaluation factors for award

Part 1—The schedule

The contracting officer will prepare the contract schedule as follows:

A Solicitation/contract form

(1) Prepare RFPs on DA Form 4069–R, Solicitation, Offer and Award. The DA Form 4069–R is the first page of the solicitation and includes Section A of the Uniform Contract Format.

(2) When DA Form 4069–R is used, include the following on the first page of the solicitation:

Block 1—(Contract number inserted upon making an award).

Block 2—Solicitation number and check method of procurement.

Block 3—Date of issuance.

Block 4—Purchase request number.

Block 5—Name, address, and location of issuing activity.

Block 6—Enter N/A unless different than block 5.

Block 7—Closing date, time, place of receipt, and number of copies required to be returned.

Block 8—Check sections incorporated and fill-in the appropriate page number.

Block 9 through 15—Contractor is to complete these blocks.

Block 16 through 23—(Contracting officer is to complete these blocks upon making an award.)

B Supplies or services and prices/costs. DA Form 4071–R will be inserted in this section. The contractor is to complete by inserting unit price and line item total. Include on this form brief description of the supplies or services: e.g., item name/number, national stock number/part number if applicable, and quantities. This includes incidental deliverables such as manuals and reports.

C Description/specifications/work statement. Include any description or specifications needed in addition to Section B.

D Packaging and marking. Provide packaging, preservation, and marking requirements, if any.

E Inspection and acceptance. Include inspection, acceptance, quality assurance, and reliability requirements.

F Deliveries or performance. Specify the requirements for time, place, and method of delivery or performance.

G Contract administration data. Include any required accounting data and any required contract administration information or instructions other than those on the DA Form 4069–R.

H Special contract requirements. Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

Part II—Contract clauses

I Contract clauses. The contracting officer will include in this section the clauses required by this regulation (DA Form 4074–R, Supply and Service Contract Clauses or DA Form 4075–R, Construction Contract Clauses) and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. Clauses that are incorporated by reference shall be included in this section.

Part III—List of documents, exhibits, and attachments

J List of attachments. The contracting officer will list the title, date and number of pages for each attached document, exhibit, and other attachments.

Part IV—Representations and Instructions

K Representations, certifications and other statements of offerors (DA Form 5564–R, Representation, Certification and Acknowledgements). Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors. DA Form 5564–R will be locally reproduced on 8½- by 11-inch paper. A copy for local reproduction purposes is located at the back of this book.

Figure 4A. The schedule

L Solicitation instructions and conditions (DA Form 4070–R). Insert in this section DA Form 4070–R (Solicitation Instructions and Conditions (Nonappropriated Funds)) and other information and instructions deemed necessary to guide offerors in preparing proposals. DA Form 4070–R will be locally reproduced on 8½– by 11–inch paper. A copy for local reproduction purposes is located at the back of this book. Provisions that are incorporated by reference will also be included in this section. Prospective offerors may be instructed to submit technical proposals in severable parts to meet NAFI requirements. The parts should provide for separation of technical and cost or pricing data. The instructions may specify further organization of the proposal, such as (1) administrative, (2) management, (3) technical, and (4) cost or pricing data.

M Evaluation factors for award. Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract and state the relative importance the NAFI places on those evaluation factors and subfactors. (See para 4–33 for specifics on evaluation criteria.)

Figure 4A. The schedule—Continued

c. There may be occasions when certain lettered sections are not applicable. When this happens, unused sections will be shown as not checked in the table of contents on the DA Form 4069–R. The remaining letter designations will be checked as applicable to that acquisition.

4–25. Distribution

a. The RFP and any subsequent amendments will be distributed as follows:

- (1) Three complete copies will be sent to each offeror.
- (2) One complete copy will be retained in the contracting office.
- (3) One complete copy will be furnished to the requesting activity (if desired).

b. A cover letter should be included with the RFP. The letter should—

- (1) Be signed by the contracting officer.
- (2) Clearly explaining the intent of the RFP.
- (3) Define what information is needed from the vendor and instruct the vendor in procedures for returning the RFP to the issuing office.
- (4) State the date that proposals are due back in the issuing office.

c. The offerors will be advised to retain one copy of the solicitation, and to sign and return two completed copies to the contracting officer.

d. The offerors will also be instructed to mark the exterior of the envelope containing the proposals, as follows:

DO NOT OPEN

RFP NO. _____

ATTN: (contacting officer's name)

SUBJECT: _____

Figure 4B. Envelope marking

4-26. Amendments/modifications

- a.* DA Form 4073-R will be used to amend a solicitation or to modify the contract.
- b.* After the solicitation has been issued (but before the closing date), it may become necessary to make changes to the solicitation. Such changes may include changes in quantity, specifications, or delivery schedule; correct defects or ambiguities; or change the closing date for receipt of proposals. Such changes will be made by amendment to the solicitation using DA Form 4073-R.
- c.* Before issuing the amendment, the contracting officer will decide whether the closing date needs to be changed because of the amendment. If the decision is made to extend the closing date, prospective offerors will be notified in a timely manner, either by telephone or telegram or regular mail of the extension, and the extension date will be shown on the amendment. The contracting officer will not award a contract unless any amendments made to a RFP have been issued in sufficient time to be considered by prospective offerors.
- d.* Information given to a prospective offeror (or quoter) will be furnished promptly to all other prospective offerors (or quoters) as a solicitation amendment, if the information is necessary for submitting proposals, and if the lack of information may be detrimental to a prospective offeror or quoter.
- e.* After the contract has been awarded, it may become necessary to make changes to the contract. Such changes will be made by modification to the contract using DA Form 4073-R. (See paras 7-4 and 7-6.)

4-27. Closing date

The specified date and time for receipt of proposals will be clearly stated in the solicitation. The time allowed for vendor preparation of the offers will vary with the item or service being purchased. However, the amount allowed should not be less than thirty calendar days, unless an extreme emergency exists. The solicitation file will be documented to reflect the nature and extent of the emergency. The time allowed for preparation of the offer is computed from the date of mailing of the solicitations to the date set for the receipt of proposals.

4-28. Preproposal conferences

- a.* Preproposal conferences may be used as a means of briefing prospective offerors after a solicitation has been issued but before offers are prepared. Generally, preproposal conferences are used in complex acquisitions to explain or clarify requirements.
- b.* When it is determined to be in the best interests of the NAFI to hold a preproposal conference, the contracting officer shall make the necessary arrangements and will notify all those to whom solicitations have been issued as to the time, place, and general nature of the proposed conference. Adequate notice will be given to prospective offerors so that all who wish to attend may arrange for representation. If time permits, prospective offerors should be asked to submit, in writing, any questions they may have prior to the conference in order to give the purchasing office time to prepare for and to make the conference as beneficial as possible.
- c.* The preproposal conference will be conducted by the contracting officer or designee, and will be attended by technical and legal personnel as appropriate. All prospective offerors will be furnished identical information pertaining to the proposed acquisition, regardless of whether they attend the conference. Remarks and explanations at the conference will not change the terms of the solicitation and specifications. All conferees will be advised that unless the solicitation is amended in writing, it will remain unchanged; that if an amendment is issued, normal procedures relating to the acknowledgement and receipt of solicitation amendments will be applied. A complete point-by-point record, to include the names of the attendees and the organizations/companies they represent and their mailing addresses, of the conference will be made for the contract file.

4-29. Receipt and safeguarding of proposals

- a.* When responses to solicitations are received, the contracting officer or designated individual will date and time-stamp the envelope and enter other identifying information in a log maintained for that purpose. The proposal will then be placed in a locked container until the date of opening.
- b.* Proposals from those who were not formally solicited will be treated in the same manner as proposals received from offerors solicited.

4-30. Opening proposals

On or soon after the date and time specified for the receipt of proposals, the contracting officer will open the proposals in the presence of one witness. The contracting officer will prepare an abstract of the proposals noting the date and time of receipt and any other pertinent information contained in the proposal. When all proposals have been opened and the abstract has been prepared, the contracting officer and the witness will sign and date the abstract, verifying the accuracy of the information it contains.

4-31. Late proposals and late modifications

A late proposal or modification may be accepted only in accordance with the terms of the clause entitled "Late Submissions, Modifications, and Withdrawal of Proposals." (See DA Form 4070-R.)

4-32. Cancellation of solicitations

If it becomes necessary to cancel a solicitation after it has been issued, all offerors to whom the solicitation was sent will be notified of the cancellation in writing. Proposals received in response to the solicitation will be returned to the offerors, except that one complete copy of each proposal received will be kept to maintain the integrity of the solicitation file.

4-33. Evaluation of offers

a. The factors that will be considered in evaluating offer should be tailored to each acquisition and include only those factors that will have an impact on selecting the source. Price or cost will be included as a factor in all NAF acquisitions. Other evaluation factors that may apply to a particular acquisition are technical excellence, management capability, personnel qualifications, experience, past performance and performance schedule.

b. In evaluating price, any discount offered for quantity of items ordered, any shipping charges, and any minimum order charges should be used to determine the actual cost of the supplies or services. In evaluating time of delivery or performance, contracting personnel and requiring activities should ensure that schedules are not unreasonably tight or difficult to attain, so that competition will not be restricted and result in a higher contract price.

c. Contracting officers will, in addition, evaluate offers on the basis of the advantages and disadvantages to the NAFI of making multiple awards. For this purpose an administrative cost of \$500.00 will be added for issuing and administering each contract awarded under a solicitation.

d. All criteria to be used in making the award and the relative importance of each criterion will be clearly set forth in the solicitation. While numerical weights may be employed in evaluating proposals, the actual numerical weights given each criterion will not be disclosed in the solicitation or any debriefings. In addition, evaluation scoring of each offeror will not be disclosed in debriefings of offerors after award.

e. Where minor deviations are encountered, an attempt should be made to negotiate to bring the offer into compliance with the RFP, unless urgent need for the item or service dictates that an award be made without discussions, the RFP permits such an award, and the determination to award is documented in the contract file.

4-34. Competitive range for offers

The contracting officer will determine which proposals are in the competitive range for the purpose of conducting written or oral discussion. The competitive range will be determined on the basis of price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, the proposal should be included. When evaluating the factors listed in the solicitation, such information as Government/NAFI estimate, market analysis and technical input from the requesting activities, as to experience with the commodity or service being procured, should be considered.

4-35. Responsible prospective contractors

a. Purchases will be made from, and contracts awarded to, responsible prospective contractors only. No purchase or award will be made unless the contracting officer makes an affirmative determination of responsibility.

b. In order to be considered responsible, a prospective contractor must meet all of the following criteria:

- (1) Have sufficient financial resources to perform the contract, or have the ability to obtain them.
- (2) Be able to comply with the delivery or performance schedule.
- (3) Have a satisfactory performance record.
- (4) Have a satisfactory record of integrity and business ethics.
- (5) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.
- (6) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
- (7) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

c. Before making a determination of responsibility, the contracting officer will possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the standards of *b* above.

4-36. Preaward survey

Preaward surveys are generally used when the contracting officer does not have enough information to determine whether a prospective contractor is responsible. See paragraph 4-35 *b*(1) through (7) for determining that a contractor is responsible. They are normally not used when the proposed contract is for \$25,000 or less, or when it is a fixed-price contract of less than \$100,000 for off-the-shelf supplies. Before beginning a preaward survey, the contracting officer will ascertain whether the prospective contractor is debarred, suspended, or ineligible. If the

prospective contractor is debarred, suspended, or ineligible, the contracting officer will not proceed with the preaward survey. The information generated by the pre-award surveys shall be prepared in memorandum format. Generally, preaward surveys are done promptly after receipt of offers (or bid opening). However, if the contract requirements are such that a pre-award survey would be necessary in order to obtain information on prospective contractors, the contracting officer will require the following data is submitted with proposals:

- a. The location, type of facility, dollar value, contracting agency, contracting officer or project officer, date completed, for all nonappropriated fund (NAF) or Government contracts the offeror has received during the past 3 years. If no NAF or Government contracts have been performed, furnish information relating to commercial contracts of the same scope as that contained in the solicitation. Information should be submitted on both complete contracts and those in progress.
- b. One copy of the most recent Certified Public Accountant (CPA) verified annual financial report (balance sheet and income statement, as a minimum) or other evidence of financial condition acceptable to the contracting officer.
- c. Number of years the firm has been in business.
- d. Name of the firm's officers.
- e. Location and telephone number of the Better Business Bureau having jurisdictional responsibility for the firm's area of operation.
- f. Name, telephone number and location of the firm's bank
- g. Name of the firm's proposed bonding company (if required).
- h. Name, location and telephone number of the firm's proposed bonding agent, if required.
- i. Name, location and telephone number of the state office in which the firm's corporation status is maintained.
- j. Name, location and telephone number of the state agency with which the firm's proposed architect is registered (if required).
- k. Proposed method of contract management, e.g., Project Manager, full time site or project superintendent, etc.

4-37. Best and final offers

When all offers have been evaluated, and discussions have been completed, the contracting officer may issue a written request to all offerors in the competitive range for a best-and-final offer. The contracting officer's request will include notice that—

- a. The offeror is being given an opportunity to submit a best-and-final offer.
- b. The offeror's revised proposal must be received by the contracting office by a specified date (2 weeks is generally a sufficient amount of time).
- c. At the conclusion of the specified time period, there will be no further negotiations, unless it is in the NAFI's interest to do so. If discussions or negotiations are reopened, the contracting officer will issue an additional request for best and final offers to all offerors still in the competitive range. Evaluations should then be conducted so as to select the offer that is most advantageous to the NAFI.

4-38. Award of contracts

- a. The proposal submitted by an offeror in response to the RFP is an offer. No award will be made until positive determinations of offeror responsibility and conformance to the solicitation are made. The offer, including additions and changes resulting from further negotiations, is accepted when the contracting officer completes the award section on DA Form 4069-R. If the file is not otherwise documented, the contracting officer's signature on the contract will affirm that determinations of offeror responsibility and conformance have been made.
- b. When several awards are to be made to the same vendor, they should be combined into a single contract unless there is a valid reason for not doing so. The total amount of the single award may not exceed the amount of the contracting officer's authority, and includes any authorized variations in quantity and separate charges, such as transportation and packing.
- c. The contract becomes effective on the date of award unless a different date is given in the contract itself. In no case, however, will a contract become effective before the date of award. Backdating an award date is strictly prohibited and shall not obligate a NAFI's funds for any backdated portion of performance. Any claim for funds covering a backdated period shall be the sole responsibility of the individual signing, or if different, the individual causing the contract to be signed.

4-38.1. Contract awards board

a. *Contract Awards Board (CAB)*. A CAB will be convened as determined by the contracting officer for supplies, services, and construction contracts. Determination will be based on the following criteria:

- (1) Degree of complexity of the proposed contract action, i.e., the extent of detailed technical, management, professional knowledge required for execution of contract.
- (2) Degree of monetary impact on the NAFI (any monetary ceiling established by local policy).
- (3) Degree of importance (priority) within the command.

(4) Degree of impact timely award has on successful execution of the contract (i.e., consideration of administrative time involved in conducting the CAB).

b. Purpose. The CAB will be conducted in order to ensure that—

(1) Applicable portions of Army regulations and other DOD directives and procedural requirements are satisfied with regard to project execution, funding, and acquisition approvals.

(2) The proposed action represents sound business judgment.

(3) The proposed contract is technically and legally sufficient.

(4) Adequate competition was obtained.

(5) An impartial and comprehensive evaluation of offerors' proposals was made.

(6) Proposed award is the proposal with the highest degree of realism and whose performance is expected to best meet stated NAFI requirements.

c. Board members. The board will consist of the Installation Commander or designee, contracting, financial, technical, and legal personnel. The chiefs of the respective offices are considered permanent board members for all CABs, however qualified alternates may be appointed. The board chairperson will be the senior member, in terms of grade and rank, and will conduct board proceedings. Contracting and legal personnel will not be voting members. The board chairperson will only vote in the event of a tie between the voting members.

d. Preparation. The contracting officer will—

(1) Prior to the CAB convening, forward a copy of those proposals (minus the pricing data) determined to be within the competitive range, to the requiring activity and technical personnel for review. Copy will be stamped, "FOR OFFICIAL USE ONLY ". Personnel reviewing proposals will evaluate offers based on evaluation factors in the solicitation and weights assigned in the evaluation plan only. A minimum of five (5) days will be allowed for this review, unless urgency of the requirement dictates a shorter timeframe.

(2) Review all proposals, prepare analysis and consolidate all internal and external technical review comments.

(3) Prepare packets for board members, and ensure that the members are provided information at least one (1) day in advance of the scheduled meeting.

(4) Ensure that a quorum exclusive of NAF contracting and legal personnel are available prior to the start of the CAB, and ensure that an individual is designated to record the pertinent points covered in the meeting.

e. Award approval. Unanimous board approval is desired. Discussions should be held to endeavor to resolve any disparities of opinion; however, if a unanimous decision cannot be reached, a majority vote will prevail.

f. Proceedings. Prior to the board convening, the contracting officer will have documented his/her decision as to the proposed award. Board members will have reviewed packets provided before the meeting. The information included in packets should be a comprehensive disclosure of all factors leading up to the contracting officer's proposed award decision. Information will include—

(1) *Abstract of offers.* With the exception of late offers, the abstract will contain price and delivery or performance data submitted by all offerors. The abstract will also indicate those offers that are not to be considered by the CAB members because they were outside the competitive range or were otherwise nonresponsive.

(2) *Financial analysis of offerors.* The financial analysis of the data requested from the offeror shall be arrayed in a spreadsheet format. Of primary concern are the firms' liquidity, solvency, and profitability.

(3) Contracting officer's analysis of the proposals.

(a) The contracting officer will prepare, in memorandum format, an analysis of all proposals received. The analysis will include, as a minimum—

1. Reasons for any proposals being determined nonresponsive.

2. Establishment of a competitive range, and those offers not within that range.

3. Evaluation of those offers within the competitive range.

4. The offeror to whom the contracting officer proposes to make the award.

(b) The contracting officer will orally synopsise the contents of the packets and reiterate rationale for finding any of the proposals or offerors that are nonresponsive. If the proposed contract is for a construction or architect-engineer contract, the contracting officer will have available at the meeting the RFP (with drawings and specifications), and the proposals of those responsible offerors within the competitive range which were responsive. The drawings and specifications shall be presented to the board members for review (if not previously reviewed), followed by the proposal of the offeror to whom the contracting officer proposes to make the award. The proposals of other offerors shall be presented upon request of the board members.

(c) After voting has taken place, the minutes of the CAB will be prepared in final memorandum format by the contracting officer and provided to each member for written concurrence on the board's recommendation. If the SJA is represented at the proceedings, legal concurrence will be obtained in the same manner. In the event the SJA is not represented at the CAB, a formal copy of the minutes of the CAB with a packet as an enclosure, shall be forwarded immediately to SJA for final review and written concurrence.

4-39. Notification of award

When an award is made (except for Small Purchases), the contracting officer will give written notice of award to the successful offeror. When this notice has been issued, the contracting officer will then give written notice to the unsuccessful offerors that their proposals were not accepted. Upon request of an unsuccessful offeror, the contracting officer may discuss weaknesses in the unsuccessful proposal. However, the proposal will not be compared to the successful proposal and no unauthorized release of confidential or privileged information may be made during such a discussion.

4-40. Protests

a. Scope of part.

(1) This part prescribes policies and procedures for filing and handling protests when the solicitation has been issued by a NAF contracting officer.

(2) When the solicitation has been issued by an appropriated fund contracting officer, even though NAFs are involved, the procedures set forth in FAR Subpart 33.1, and its supplements will be followed.

b. General. The contracting officer is responsible for answering or resolving all protests received. Protests may be received either before or after contract award. Any protest lodged with other than the contracting activity will be referred or sent immediately to the appropriate contracting officer.

(1) Interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of or failure to award a particular contract.

(2) Protest is a written objection by an interested party to a solicitation issued by a NAFI for offers on a proposed contract for the acquisition of supplies or services, or a written objection by an interested party to a proposed award of such a contract.

c. Coordination with Staff Judge Advocate (SJA). Upon receipt of a protest, the contracting officer will immediately notify the servicing SJA.

d. Oral protests. When an oral protest is received, the contracting officer will advise the protestor that, in order to be considered the protest must be submitted in writing and forwarded directly to his or her attention.

e. Protests prior to award.

(1) When a protest is received prior to award of the contract, the award will be delayed until the protest (including appeals) is resolved, unless the contracting officer determines that one of the following applies:

(a) The supplies or services to be contracted for are urgently required.

(b) Delivery or performance will be unduly delayed by failure to make a prompt award.

(c) Expiration of current contract is imminent and continued service is required.

(d) A timely award will otherwise be advantageous to the NAFI.

(2) Before awarding a contract under the above cited circumstances, the advice of the servicing SJA will be obtained. Advice may be oral or in writing. The contracting officer will evidence oral advice by placing a memorandum for record in the resulting contract file.

(3) If the contracting officer delays award of the contract, he or she will conduct discussions or convene whatever meetings or conferences are necessary to determine the merits of the protest. When the contracting officer finds protest has merit, he or she will immediately take action to correct the situation. Such possible actions include, among others, the rejection of all proposals and issuance of a new or amended solicitation or using revised specifications or evaluation criteria. In the event of amended solicitations, the scheduled date for receipt of proposals will be extended accordingly. If resolution of the protest makes previously ineligible offerors eligible for award, appropriate notification will be given to the offerors concerned.

f. Requirement for a written decision. Protests that cannot be resolved at a conference or that the contracting officer determines to have no merit will require a written decision and reply by the contracting officer to the protestor explaining the rationale for the decision, and will include the following: "You are advised that you may appeal this decision within seven (7) calendar days from receipt of this letter by mailing or otherwise furnishing a written appeal addressed to (insert the full mailing address of the Installation Commander.) The notice should indicate that an appeal is intended and should reference this decision."

g. Appeals to installation commander. The installation commander or designee shall obtain the written advice of the servicing SJA before deciding the appeal. The installation commander or designee will respond to the appeal in writing and advise the protestor that his or her decision is final and that no further appeals are allowed.

h. Protests after award.

(1) When the contracting officer receives protest after the contract has been awarded, the contract will not normally be terminated. If the protestor presents compelling reasons why the award should be invalidated, the contracting officer will attempt to negotiate a mutual agreement with the contractor that performance can be suspended on a no-cost basis, until the protest is resolved. If a no-cost suspension cannot be negotiated, the advice of the servicing SJA will be sought.

(2) When contract performance has not been suspended or terminated, the contracting officer will advise the protestor in writing that the protest is not being considered because of untimeliness.

4-41. Mistakes

a. Mistakes before award. Contracting officers will review all proposals for minor informalities and irregularities and for apparent clerical errors. Discussions with offerors to clarify these matters do not constitute negotiation, and usually resolve the inaccuracies. When an award without discussion is considered, the contracting officer will comply with the following:

(1) If the contracting officer suspects a mistake, the contracting officer will inform the offeror and request verification. If the offeror verifies the proposal, award may be made.

(2) If an offeror alleges a mistake, the contracting officer will advise the offeror that the proposal may be withdrawn, or that correction may be sought as explained in paragraph (3) below.

(3) If an offeror requests permission to correct a mistake, the chief of the contracting office may make a written determination permitting the correction, provided that it can be proven that a mistake actually was made, and provided a legal review is obtained prior to making the determination.

(4) If the determination by the chief of the contracting office cannot be made and the contracting officer is still considering award without discussion, the offeror will be given a final opportunity to withdraw or verify the proposal.

(5) If the correction of a mistake, however, requires the use of documents, worksheets, or other data outside the solicitation and proposal in order to establish the existence of the mistake, its correction will be considered a matter for negotiation and will open discussion with other offerors as described in paragraph 4-21.

b. Mistakes after award. When a mistake is discovered after award, it may be corrected by a modification to the contract, if the correction is favorable to the NAFI and if it does not change the essential requirements of the contract. In all other cases, the procedure below will be followed when considering mistakes discovered after award:

(1) The contracting officer will obtain from the contractor whatever evidence the contractor can provide to prove that a mistake was actually made, and to show what the contractor intended to offer in the proposal.

(2) The contracting officer will then review the contractor's documents to verify the mistakes and to determine whether the contract should be modified, terminated, or allowed to stand as written.

(3) After reaching a decision, the contracting officer will prepare a report that contains the following:

(a) All evidence furnished by the contractor in support of the mistake.

(b) A summary of the evidence provided by the contractor and any additional pertinent evidence.

(c) A determination as to whether a mistake was made. If this is so, the contracting officer will also analyze whether—

1. The effect of correcting the mistake would increase costs to the NAFI; determine whether a revised contract would still represent the lowest offer; and examine any other considerations that the contracting officer deems appropriate.

2. Not correcting the mistake would affect the contractor's ability to perform under the existing contract and the quality of the product or service to be delivered.

(d) A discussion on the status of the contract in terms of performance, deliveries, and payments.

(e) A signed statement by the contracting officer recommending whether to modify the contract or allow it to stand as written.

(4) When the report has been completed, it will be forwarded to the chief of the contracting officer who, after coordination with legal counsel, shall issue a written decision on the matter.

4-42. Unsolicited proposals

a. An unsolicited proposal is a written proposal that is submitted to the NAFI on the initiative of the submitter for the purpose of obtaining a contract with the NAFI and which is not in response to a formal or informal request. Advertising material, commercial product offers, contributions, or technical correspondence are not unsolicited proposals. All unsolicited proposals will be forwarded to the Chief of Contracting for coordination, receipt, evaluation and disposition. Unsolicited proposals are a valuable means of obtaining innovative or unique methods or approaches to accomplishing a mission. However, NAFI personnel are cautioned not to encourage vendors to submit proposals.

b. The Chief of Contracting will in turn provide the unsolicited proposal to appropriate technical personnel for their evaluation. However, if the unsolicited proposal is not related to the mission of the receiving agency, it need not be evaluated.

c. The criteria below will be considered in evaluating an unsolicited proposal. A valid unsolicited proposal must—

(1) Be innovative and unique.

(2) Be independently originated and developed by the offeror.

(3) Be prepared without NAFI or Government personnel supervision.

(4) Include sufficient detail to permit a determination that the NAFI would benefit.

(5) Not be an advance proposal for a known NAFI requirement that can be acquired by competitive methods.

d. General guidance in FAR and DFARS, subpart 15.5 for handling unsolicited proposals, which is not specifically outlined above, will be used.

Section IV

Sealed Bidding

4-43. Conditions for use

Sealed bidding is not the preferred method of contracting for NAFIs and may be used only when the following conditions are present:

- a.* Price is the only evaluation factor.
- b.* Current and accurate purchase descriptions or specifications have been developed.
- c.* Time permits the solicitation, submission and evaluation of bids.
- d.* It is not necessary to conduct discussions with the respective bidders; and
- e.* There is a reasonable expectation of receiving more than one sealed bid.

4-44. Preparation of invitation for bids (IFB)

IFBs will be prepared using the uniform contract format contained in paragraph 4-24.

4-45. Bid submission

Bids shall be submitted so that they will be received in the office designated in the invitation for bids not later than the exact time set for opening of bids.

4-45.1. Bidding time

a. Policy. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the NAFL. A bidding time (i.e., the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided.

b. Factors to be considered. Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time:

- (1) Degree of urgency.
- (2) Complexity of requirement.
- (3) Anticipated extent of subcontracting.
- (4) Whether use was made of presolicitation notice.
- (5) Geographic distribution of bidders.
- (6) Normal mailing time for both invitation and bids.

4-45.2. Telegraphic bids

a. Telegraphic bids and mailgrams shall be authorized only when—

- (1) The date for the opening of bids will not allow bidders sufficient time to submit bids on the prescribed forms; or
- (2) Prices are subject to frequent changes.

b. Telegraphic bids shall not be considered unless permitted by the invitation. The term “telegraphic bids” means bids submitted by telegram or by mailgram.

4-45.3. Records of invitations for bids and records of bids

a. Each contracting office shall retain a record of each invitation that it issues and each abstract or record of bids. Contracting officers shall review and utilize information available in connection with subsequent acquisitions of the same or similar items.

b. The file of each invitation shall show the distribution that was made and the date the invitation was issued. The names and addresses of prospective bidders who requested the invitation and were not included on the original solicitation list shall be added to the list and made a part of the record.

4-45.4. Pre-bid conference

a. A pre-bid conference may be used, generally in a complex acquisition, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before bids are opened. It shall never be used as a substitute for amending a defective or ambiguous invitation.

b. The contracting officer shall decide if a pre-bid conference is required and make the necessary arrangements, including the following:

(1) If notice was not in the solicitation, give all prospective offerors who received the solicitation adequate notice of the time, place, nature, and scope of the conference.

(2) If time allows, request prospective offerors to submit written questions in advance. Prepared answers can then be delivered during the conference.

(3) Arrange for technical and legal personnel to attend the conference, if appropriate.

c. The contracting officer shall conduct the pre-bid conference, furnish all prospective offerors identical information concerning the proposed acquisition, make a complete record of the conference, and promptly furnish a copy of that record to all prospective offerors. Conferees shall be advised that—

(1) Remarks and explanations at the conference shall not qualify the terms of the solicitation; and

(2) Terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

4-45.5. Amendment of invitation for bids

a. If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by amendment of the invitation for bids using DA Form 4073-R (Amendment of Solicitation/Modification of Contract). The fact that a change was mentioned at a pre-bid conference does not eliminate the necessity for issuing an amendment. Amendments shall be sent, before the time for bid opening, to everyone to whom invitations have been furnished and shall be displayed in a designated area.

b. Before amending an invitation for bids, the period of time remaining until bid opening and the need to extend this period shall be considered. When only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegram or telephone. Such extension must be confirmed in the amendment.

c. Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation—

(1) If such information is necessary for bidders to submit bids or,

(2) If the lack of such information would be prejudicial to uninformed bidders. The information shall be furnished even though a pre-bid conference is held. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

4-45.6. Cancellation of invitations before opening

a. The cancellation of an invitation for bids usually involves loss of time, effort, and money spent by the NAFI and bidders. Invitations should not be cancelled unless cancellation is clearly in the public interest, such as—

(1) Where there is no longer a requirement for the supplies or services, or

(2) Where amendments to the invitation would be of such magnitude that a new invitation is desirable.

b. When an invitation is cancelled, bids that have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations were issued.

c. The notice of cancellation shall—

(1) Identify the invitation for bids by number and short title or subject matter.

(2) Briefly explain the reason the invitation is being cancelled, and

(3) Where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of supplies or services involved.

4-45.7. Late bids, late modifications of bids, or late withdrawals of bids

Bids received in the office designated in the invitation for bids after the exact time set for openings are “late bids”.

a. A late bid, modification of bid, or withdrawal of bid shall not be considered unless received before contract award, and either—

(1) It was sent by registered or certified mail not later than 5 calendar days before the bid receipt date specified; or

(2) It was sent by mail (or telegram if authorized) and it is determined by the NAFI that the late receipt was due solely to mishandling by the NAFI after receipt at the Government installation.

b. The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be deemed to have been mailed late. (The term “postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service.) Therefore, bidders should request the postal clerk to place a hand cancellation bull’s-eye “postmark” on both the receipt and the envelope or wrapper.

c. The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

d. Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the NAFI will be considered at any time it is received and may be accepted.

4-45.8. Notification to late bidders

When a bid, modification of bid, or withdrawal of bid is received late and it is clear from available information that it cannot be considered, the contracting officer shall promptly notify the bidder accordingly. However, when a late bid, modification of bid, or withdrawal of bid is transmitted by registered or certified mail and is received before award but it is not clear from available information whether it can be considered, the bidder shall be promptly notified substantially as follows: "Your bid in response to Invitation for Bids number _____, dated _____, for _____ (Insert subject matter or short title) was received after the time for opening specified in the Invitation. Accordingly, your bid will not be opened or considered for award unless there is received from you by registered or certified mail showing a date of mailing not later than the fifth calendar day before the date specified for opening (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier)."

4-45.9. Disposition of late submissions

Late bids, modification of bids, or withdrawal of bids that are not considered for award shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee shall be returned.

4-46. Opening of bids

a. At the time set for opening of the bids, the contracting officer will publicly open all bids received. The contracting officer may read the bids aloud if time permits. After opening, the bids will be recorded as an abstract of bids, and the abstract will be retained in the resulting contract file.

b. The time designated for the opening of bids may be postponed when—

- (1) A significant number of bids are known to have been delayed in the mail through no fault of the bidders; or
- (2) An emergency interrupts the normal operation of the contracting office.

4-46.1. Mistakes in bids

a. *Examination of bids.* After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this section. Such action shall be taken before award.

b. *Apparent clerical mistakes.*

(1) Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award. The contracting officer first shall obtain from the bidder, a verification of the bid intended. Examples of apparent mistakes are—

- (a) Obvious misplacement of a decimal point.
- (b) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days).
- (c) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and
- (d) Obvious mistake in destination of unit.

(2) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

4-46.2. Mistakes after award

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed as follows:

a. When a mistake in a contractor's bid is not discovered until after award, the mistake may be corrected by contract amendment if correcting the mistake would be favorable to the NAFI without changing the essential requirements of the specifications.

b. In addition to the cases contemplated in *a* above, or as otherwise authorized by law, contracting officers are authorized to make a determination—

- (1) To rescind a contract.
- (2) To reform a contract—
 - (a) To delete the items involved in the mistake or,

(b) To increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids.

(3) That no change shall be made in the contract as awarded, if the evidence does not warrant a determination under subparagraphs (a) or (b) above.

c. Determinations under subparagraphs a and (b) above may be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was mutual, or so apparent as to have charged the contracting officer with notice of the probability of the mistake if unilaterally made by the contractor.

d. Each proposed determination shall be coordinated with legal counsel.

e. Mistakes alleged or disclosed after award shall be processed as follows:

(1) The contracting officer shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as—

(a) The contractors file copy of the bid.

(b) The contractor's original worksheets and other data used preparing the bid.

(c) Subcontractors' and suppliers' quotations, if any.

(d) Published price lists, and

(e) Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

(2) The case file concerning an alleged mistake shall contain the following:

(a) All evidence furnished by the contractor in support of the alleged mistake.

(b) A signed statement by the contracting officer—

1. Describing the supplies or services involved.

2. Specifying how and when the mistake was alleged or disclosed.

3. Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent.

4. Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved, or in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services and the basis for the estimate.

5. Setting forth the contracting officer's opinion whether a bona fide mistake was made and whether the contracting officer was, or should have been, on constructive notice of the mistake before the award, together with the reasons for, or data in support of, such opinion.

6. Setting forth the course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and if other than a change in contract price is recommended, the manner by which the supplies or services will otherwise be acquired; and

7. Disclosing the status of performance and payments under the contract, including contemplated performance and payments.

(c) A signed copy of the bid involved.

(d) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.

(e) An abstract or written record of the bids received.

(f) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the contracting officer and the contractor concerning the alleged mistake.

(g) A copy of the contract and any related change orders or supplemental agreements.

4-46.3. Preaward survey

(See para 4-36.)

4-47. Award

The award will be made to the lowest responsive and responsible bidder within any time limits which may have been set by the acceptance of the bid. The contracting officer will issue a written notice of an award as described in paragraph 4-39. Contracts awarded under this method will be firm-fixed-price contracts.

4-48. Protests

(See para 4-40.)

Chapter 5

Contract Types

Section I

Selecting Contract Type

5-1. General

a. A contract is an agreement between two or more competent parties for a valid consideration to accomplish a lawful purpose with terms clearly set forth in a form required by law. Generally, competent parties refer to those individuals who have the legal capacity to contract, excluding minors, insane, or intoxicated persons. A consideration exists when something of value, usually money, is given in exchange for performance. A lawful purpose is one that is not illegal. Contracts must be in writing. When one contract provision is inconsistent with another provision in the same contract, handwriting supersedes typewriting; typewriting supersedes printed matter. In correcting or revising contracts or modifications, the same rule will apply. When used in this regulation, the term “contract” includes purchase orders and delivery orders.

b. Contract types can be grouped into two major categories—fixed-price contracts and cost-reimbursement contracts. NAF contracts will be of the fixed-price type to the extent possible. Use of other than the fixed-price type shall require written justification, legal review (regardless of dollar value), MACOM, and HQ, USACFSC approval (para 1-12).

c. Prior to initiating a purchase, contracting personnel must make a determination of whether the particular commodity or service dictates a unilateral or bilateral instrument, simplified small purchase procedures or format contracting procedures. In making this determination, the following factors should be taken into consideration: the amount of time for development of the solicitation, the complexity of the buy, the required delivery time, and the amount of risks to the NAFI.

5-2. Fixed-price contracts

a. The price in a firm fixed-price contract may not be adjusted as a result of the contractor’s cost in performing the contract. This type of contract places the risk on the contractor and makes the contractor responsible for any resulting profit or loss. It is the most appropriate type of contract for the acquisition of commercial products and for other noncomplex supplies and services. To use this type of contract, the contracting officer must be able to determine that the quoted or offered price is fair and reasonable.

b. Provisions for economic price adjustment will be considered for inclusion in the contract when the contracting officer determines current market conditions require such a provision.

c. For additional guidance, see FAR 16.203-1 and FAR 16.203-2.

5-3. Basic Ordering Agreements (BOA)

a. BOA. A BOA is a written document containing terms and conditions of performance that has been negotiated by the contracting officer and the contractor. It contains clauses that apply to future contracts between the parties. It is not a contract in and of itself, but serves as a tool intended to simplify purchasing procedures. In addition, a BOA contains a description of the supplies or services to be covered under the agreement, their prices and the method by which future orders may be issued.

b. Use of a BOA. A BOA may be used when precise requirements are not known but a significant number of requirements are expected to be purchased against the agreement. The BOA shall contain no guarantees that purchases will be made against it and shall not be used in any way that restricts competition.

c. Placement of orders against a BOA. To place an order against a BOA, the contracting officer must—

- (1) Obtain competition (if the order exceeds 2,500).
- (2) Obtain any applicable reviews or approvals.
- (3) Issue the order on DA Form 4067-R as a delivery order.
- (4) Incorporate by reference the provisions of the basic ordering agreement.

5-4. Lease or purchase of equipment

a. It may occasionally be more economical for the NAFI to lease equipment than to purchase it. The decision to lease rather than to purchase must be made on a case-by-case basis, applying the following criteria:

- (1) The NAFI’s need is short-term, and purchase would be costlier than leasing.
- (2) It is likely that the equipment will become obsolete within a short period and replacement will be necessary.
- (3) The lessor will provide the equipment, as well as maintenance and repair service, at a price lower than would otherwise be available to the NAFI.

b. A service contract format will be used where a decision has been made to lease, rather than purchase the equipment.

Section II Service Contracting

5-5. General

a. This section prescribes general policy and procedures for acquiring services by contract, and includes services to which the Service Contract Act of 1965 applies, but is not limited to those services covered under the Act. It distinguishes between contracts for personal services and those for nonpersonal services and includes special conditions to be observed in acquiring consulting services. This section does not regulate the obtaining of services by direct appointment, under normal NAF employment procedures.

b. Nonpersonal services contract is a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the NAFI/Government and its employees.

c. Personal services contract is a contract that, by its express terms or as administered, and makes the contractor personnel appear, in effect, NAFI/Government employees.

d. Service contract is a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract can cover services performed by either professional or nonprofessional personnel and can be performed by an individual or an organization. Some of the areas in which service contracts are found include the following:

(1) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.

(2) Routine recurring maintenance of real property, e.g., elevator maintenance.

(3) Housekeeping and base services, e.g., janitorial work, dry cleaning and laundry, fire protection services, sanitation and trash removal, lawn care and pest control.

(4) Consulting services.

(5) Engineering and technical services, telephone and other utility services.

(6) Operation of NAFI/Government-owned equipment and facilities.

(7) Architect-Engineering.

(8) Transportation and related services.

(9) Instructors (martial arts, dance).

(10) Sports officials.

5-6. Contract requirements

a. The contracting officer is responsible for ensuring that a proposed contract for services is proper. For this purpose the contracting officer will—

(1) Determine whether the proposed service contract is for personal or nonpersonal services in accordance with paragraphs 5-5 and 5-7.

(2) In doubtful cases, obtain the review of legal counsel.

(3) Document the file with (i) the opinion of legal counsel, if any, (ii) a memorandum of the facts and rationale supporting the conclusion that the contract does not violate any applicable regulations and laws, and (iii) any further documentation that may be required.

b. When A NAFI enters into a service contract with an individual, the contractor will be required to provide the contracting officer with the contractor's name, address and a social security account number (SSAN), prior to performance on the contract. The contracting officer will furnish this information to the Central Accounting Office to comply with applicable Internal Revenue Service (IRS) reporting requirements of certain payments made to individuals. Contracting officers will include the following Privacy Act Statement in the contract.

Table 5A
Privacy Act Statement

Authority	10 U.S.C. 3013.
Principle Purpose	Identification of contractors who contract with the NAFI as individuals.
Routine uses	The information will be used to comply with IRS reporting requirements of certain payments made to individuals. Information furnished may be disclosed to other Federal, State, and Local Government Agencies in the pursuit of their official duties. It may also be used for other lawful enforcement of litigation. The Social Security Number (SSN) is used for identification of individuals and records.

Table 5A
Privacy Act Statement—Continued

Disclosure	Disclosure is voluntary. If the information requested is not provided, the contract will not be executed.
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c. The contracting officer will include the statement below in the contract. See AR 215–1, chapter 15, and AR 215–5, paragraph 5–4 for more information.

“The payments received by the contractor under this contract may be reported to the Internal Revenue Service (IRS) in accordance with Federal laws. Payments will be reported on IRS Form 1099–MISC (Miscellaneous Income). If payments are reported to the IRS, the contractor will be furnished a copy of the IRS Form 1099–MISC by the Central Accounting Office.” (The IRS Form 1099–MISC may be requested by calling 1–800–424–3676 providing the IRS with the address as to where to send the requested form to).

5–7. Personal services contracts

a. A personal service contract is characterized by the employer–employee relationship it creates between the NAFI and the contractor’s personnel. The NAFI is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by AR 215–3. Personal services of all individuals where an employee–employer relationship exists will be obtained per the provisions of AR 215–3 by appointment of the individuals to NAFI positions.

b. An employer–employee relationship under a service contract occurs when as a result of the contract’s terms or the manner of its administration during performance contractor personnel are subject to relatively continuous supervision and control of the NAFI. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor into a NAFI employee.

c. Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the NAFI exercise relatively continuous supervision and control over the contractor personnel performing the contract? The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous NAFI supervision of a substantial number of contractor employees would have to be taken strongly into account.

d. The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

- (1) The service is performed on site.
- (2) The NAFI provides the tools, equipment, or secretarial or other services necessary to perform the work.
- (3) The contractor is given physical access to the command’s records and files.
- (4) The contractor works on dates or hours set by or required to be reported to, the command.
- (5) The contractor serves for an extended period of time or the need for the type of services can be expected to last more than one year.
- (6) The contractor is placed under the direct or indirect supervision of command personnel.
- (7) The performance of the service is an integral part of the performance of the mission of the NAFI. See AR 215–1, chapter 15 for additional guidance.

e. Contracting with an individual on a fee basis for the performance of a service, such as a sport official, instructor or sports professional, is generally considered to be of the nonpersonal service type, rather than a personal service contract.

5–8. Services of quasi–military armed forces

NAFIs are prohibited from contracting with detective agencies that offer quasi–military armed personnel for hire, with any of their employees, and with independent private investigators (5 U.S.C. 3108). This prohibition does not extend, however, to contracts with firms that offer security guard services, even though their employees may carry weapons and the company provides general investigative as well as protective services.

5–9. Service Contract Act of 1965

a. The Service Contract Act of 1965 (41 USC 351 through 358, as amended) provides for minimum wages and fringe benefits as well as other conditions of work under certain types of service contracts. Whether or not the Act applies to a specific service contract will be determined by the definitions and exceptions given in the Act, or implementing regulations. Telephonic inquiries pertaining to the applicability of the Service Contract Act, may be directed to the Army Labor Advisor, DAJA–LC, telephone 1–202–695–4369.

b. If a new contract, extension to an existing contract, or the exercise of an option to a contract will exceed \$2,500 and it is determined that the Service Contract Act will otherwise apply, the contracting officer will prepare a Standard

Form (SF) 98, (Notice of Intention to make a Service Contract and Response to Notice) and SF 98a, (Notice of Intention to make a Service Contract and Response to Notice (Attachment A)) and submit them to the Department of Labor requesting the applicable wage rate determination. In preparing the SF 98 and SF 98a, the contracting officer will determine whether applicable service employee classification descriptions are contained in the Service Contract Act Directory of Occupations and reference those classifications when preparing the SF 98 and 98a. If the service employee classification is not shown, the contracting officer will describe the service on the SF 98 and 98a, and submit these forms to the Wage and Hour Administrator, Department of Labor, Washington, DC 20210. A copy of the completed forms will be retained in the contract file.

c. The SF 98a will contain the following information about employees expected to be employed by the contractor and any known subcontractor in the performance of the work under the contract:

- (1) Classes of service employees.
- (2) The number of employees in each class.
- (3) The wage rate that would be paid each class if employed by a Federal agency.

c.1. If the wage determination requested is not received in time for inclusion in the solicitation, the contracting officer should proceed using the latest wage determination included in the existing contract, if any. If a new wage determination is subsequently received ten or more days prior to the opening of bids or the date established for the initial receipt of proposals, it will be included in the solicitation only when there is a reasonable time to notify offerors.

c.2. For recurring types of service contracts, contracting officers should keep on file the latest wage rate determination for specific disciplines. Available determinations should be included in the solicitation until the contracting officer can obtain the latest determination from DOL.

d. The Wage and Hour Administrator will issue wage determinations in response to the Notice of Intention if the Act applies. The wage determinations will be attached to solicitation and contracts over \$2,500.

e. DA Form 4074-R, Contract Clauses (Nonappropriated Fund Supply and Service Contracts), will be attached to all service solicitations and contracts (para 5-1c). Certain clauses are self-deleting and application will be determined in accordance with language contained in the clause.

5-10. Consulting services

a. *General.* The section governs contracts for consulting services. Consulting services are those services of a purely advisory nature relating to the functions of NAFI administration and management and program management. These services are normally provided by persons and/or organizations that are considered to have knowledge and special abilities not generally available within the NAFI.

b. *Types of consulting services.* The following are examples of consulting services:

- (1) Advice on or evaluation of NAFI administration and management, such as—

- (a) Organizational structures.
- (b) Reorganization plans.
- (c) Management methods.
- (d) Budgeting procedures.
- (e) Mail-handling procedures.
- (f) Records and file organization.
- (g) Personnel procedures.
- (h) Discriminatory labor practices.
- (i) Agency publications.
- (j) Internal policies, directives, orders, manuals, and procedures.
- (k) Management information systems.

- (2) Advice on or evaluation of NAFI program management, such as—

- (a) Program plans.
- (b) Acquisition strategies.
- (c) Assistance strategies.
- (d) Regulations.
- (e) Solicited or unsolicited technical and cost proposals.
- (f) Legal aspects.
- (g) Economic impacts.
- (h) Program impact.
- (i) Mission and program analysis.

c. *Policy.*

(1) Using consulting services properly is a legitimate way to improve NAFI services and operations. Accordingly, under the terms of this regulation, consulting services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

- (2) NAFIs may contract for consulting services when it is essential to the NAFI's mission to obtain—
 - (a) Specialized opinions or professional or technical advice not available within the NAFI or from another activity.
 - (b) Outside points of view, to avoid too limited a judgment on critical issues.
 - (3) NAFIs will not contract for consulting services—
 - (a) To perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of NAFI officials.
 - (b) To bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.
 - (4) Extension of a consulting services contract by modification legally creates a new contract. Therefore, such a modification is improper unless all the requirements and limitations of this regulation have been complied with.
- d. Management controls.*
- (1) The contracting officer is responsible for determining whether a requested contractual action or solicitation, regardless of dollar value, is for consulting services. The contracting officer's determination will be final. Before processing any contractual action or solicitation for consulting services, the contracting officer will ensure that the required documentation is complete and included in the contract file.
 - (2) For acquisition of consulting services, NAFIs will establish procedures to ensure that—
 - (a) Every requirement is appropriate and fully justified in writing. (The justification will include a statement of need and the requesting official's certification that the services do not unnecessarily duplicate any previously performed work or services.)
 - (b) Work statements are specific and complete and specify a fixed period of performance for the services to be provided.
 - (c) Contracts are competitively awarded, to the maximum practical extent, to ensure that costs are reasonable.
 - (d) The contract is properly administered and monitored to ensure that performance meets the requirements, and in a manner to avoid creating a personal services type of contract.

5-11. Dismantling, demolition, or removal of improvements

- a.* Contracts for dismantling, demolition, or removal of improvements are subject to either the Service Contract Act (41 USC 351 through 358, as amended) or the Davis-Bacon Act (40 USC 276a to a-7). If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Act applies unless further work that will result in construction, alteration, or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even if the additional work is under the same contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.
- b.* When a contract is solely for dismantling, demolition, or removal of improvements, the Miller Act (40 USC 270a through f) does not apply. However, the contracting officer may require the contractor to furnish a performance bond or other security in an amount that the contracting officer considers adequate to protect the interest of the NAFI.

5-12. Professional services

- a.* Professional employee is any person who is an "employee employed in a bona fide. . . professional capacity " as described in 29 CFR 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics), and teaching. To be a professional employee, a person must not only be a professional but must be involved essentially in discharging professional duties. The Service Contract Act of 1965 was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees.
- b.* Services of sports professionals (e.g., golf, tennis, and ski) may be obtained either by direct-hire NAF employment or by professional service contract when determined by the installation commander or designee to be in the best interest of the NAFI. Because the teaching qualifications of sports professionals may vary widely and these qualifications may be of greater significance to the NAFI than the price/fee considerations, negotiation of service, or concessionaire contracts with sports professionals may be conducted on a sole or limited source basis. This is provided—
 - (1) It is clearly demonstrated and documented that professional competence, such as teaching ability, past accomplishments, technical expertise, etc., is of greater importance than the price/fee considerations.
 - (2) There are a limited number of individuals reasonably available whose professional qualifications are clearly superior to those other persons who might otherwise respond to a solicitation.
- c.* Solicitations for professional service contracts will include schedule of prices and service charges as appropriate. Individuals whose services are obtained by contract will not receive salaries, retirement, or other benefits, which accrue to NAF direct-hire employees. The statement of work for professional service contracts must be specific and complete, and the administration of such contracts must be accomplished in a manner to avoid creating a personal service contract.

5-13. Insurance contracts

a. Quotations for property and casualty insurance may be solicited only when authorized by AR 215-1, chapter 14. Quotations for group medical, dental, and life insurance plans may be solicited only when authorized by AR 215-3, chapter 15.

b. The following endorsement will be required on all insurance policies: "The insured herein is a nonappropriated fund instrumentality of the United States Government. No appropriated fund of the United States shall become due or be paid to the insurer. The legal status of the insured as an instrumentality of the United States Government will not be interposed as a defense in any claim in which the insurer's liability is in any way concerned. "

c. General negotiation procedures outlined in paragraph 4-20 and 4-21 will be followed in selecting an insurance carrier.

Section III

Construction and Architect-Engineer Contracts

5-14. Construction contracts

a. *General.* This section prescribes policies and procedures peculiar to contracting for construction. DODI 4105.67 and AFARS 1.9003 establishes the dollar thresholds that require accomplishment of construction and Architect-Engineer contracts by the APF contracting office. For purposes of this section, the following terms are interpreted as follows:

(1) As-built drawing, see record drawings.

(2) Construction includes construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of clarity "buildings, structures, or other real property" include but are not limited to improvement of all types, such as bowling centers, officers', NCO and enlisted clubs, outdoor recreational centers, autocraft shops, marinas, adjoining driveways to these facilities, docks and piers. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

(3) Contract, as used in this section, is intended to refer to a contract for construction or a contract for architect-engineer services, unless another meaning is clearly intended.

(4) Firm, as used in this section in conjunction with architect-engineer services, is any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

(5) Plans and specifications, as used in this section, include drawings, specifications, and other data for and preliminary to the construction.

(6) Record drawings, as used in this section, include drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

(7) Shop drawings, as used in this section, include drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail—

(a) the proposed fabrication and assembly of structural elements.

(b) The installation (i.e., form, fit, and attachment details) of materials or equipment.

(c) both of the above.

b. *Specifications.*

(1) Construction specifications will conform to Army construction standards.

(2) When "brand-name or equal" descriptions are necessary, specifications must clearly identify and describe the particular physical, functional, or other characteristics of the brand-name items which are considered essential to satisfying the requirement (see para 3-8 for definition of brand-name or equal).

c. *NAFI/Government estimate of construction costs.*

(1) An independent NAFI/Government estimate of construction costs will be prepared and furnished to the contracting officer at the earliest practicable time for each proposed contract and for each contract modification anticipated to cost over \$25,000. The contracting officer may require an estimate when the cost of the required work is anticipated to be \$25,000 or less. The estimate will be prepared in as much detail as though the NAFI/Government were competing for award.

(2) Access to information concerning the NAFI/Government estimate will be limited to NAFI/Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the NAFI/Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the NAFI/Government's estimate will not be disclosed except as made part of the contract.

d. Disclosure of the magnitude of construction projects. Advance notices and solicitations will state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event will the statement of

magnitude disclose the NAFI's/Government's estimate. Therefore, the estimated price should be described in terms of one of the following price ranges:

- (1) \$25,000 or less.
- (2) Between \$25,000 and \$100,000.
- (3) Between \$100,000 and \$250,000.
- (4) Between \$250,000 and \$500,000.
- (5) Between \$500,000 and \$1,000,000.
- (6) Between \$1,000,000 and \$5,000,000.
- (7) Between \$5,000,000 and \$10,000,000.
- (8) More than \$10,000,000.

e. Pricing fixed-price construction contracts.

- (1) Generally, firm-fixed-price contracts will be used to acquire construction. They may be priced—
 - (a) on a lump-sum basis (when a lump sum is paid for the total work or defined part of the work).
 - (b) on a unit-price basis (when a unit price is paid for a specified quantity of work units).
 - (c) using a combination of the two methods.
- (2) Lump sum pricing will be used in preference to unit pricing except when—
 - (a) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved.
 - (b) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump sum offer without a substantial contingency.
 - (c) Estimated quantities of work required may change significantly during construction.
 - (d) Offerors would have to expend unusual effort to develop adequate estimates.

(3) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

f. Construction contracts with Architect-Engineer firms. No contract for the construction of a project will be awarded to the firm that designed the project or its subsidiaries or affiliates, unless MACOM approval is obtained.

g. Inspection of site and examination of data. The contracting officer should make appropriate arrangements for prospective offerors to inspect the work site and to have the opportunity to examine data available to the NAFI that may provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans or previous construction. The data should be assembled in one place and made available for examination. The solicitation should notify offerors of the time and place for the site inspection and data examination. If it is not feasible for offerors to inspect the site or examine the data on their own, the solicitation will also include a point of contact to coordinate a new time and place for the site inspection and data examination. Significant site information and the data should be made available to all offerors in the same manner, including information regarding any utilities to be furnished during construction. A record should be kept of the identity and affiliation of all offerors' representatives who inspect the site or examine data.

h. Distribution of advance notices and solicitations. Advance notices and solicitations should be distributed to reach as many prospective offerors as practicable. Contracting officers may send notices and solicitations to organizations that maintain, without charge to the public, display rooms for the benefit of prospective offerors, subcontractors, and material suppliers. Contracting officers may determine the geographical extent of distribution of advance notices and solicitations on a case-by-case basis.

i. Price negotiation – negotiated contracts.

- (1) NAFI will follow established policies and procedures when negotiating prices for construction.
- (2) The contracting officer will evaluate proposals based on criteria set out in the evaluation plan and by comparing proposals to the NAFI/Government estimate. When a proposed price is significantly lower or higher than the NAFI/Government estimate, the contracting officer shall ensure that both the offeror and the NAFI estimator completely understand the scope of the work. If negotiations reveal errors in the NAFI/Government estimate, the estimate will be corrected and the changes documented in the contract file.
- (3) When appropriate, proposed prices may be compared to current prices for similar types of work, adjusted for differences in the work site and the specifications. Also, rough yardsticks may be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete. (See para 5-14c.)

i.1. Evaluation.

- (1) Proposals for construction type solicitations will be evaluated using the following criteria as appropriate:
 - (a) Total cost.
 - (b) Total time of performance.
 - (c) Past performance.
- (2) Proposals for Design-Built type solicitations will be evaluated using the following criteria as appropriate:

- (a) Building engineering and installed equipment quality.
- (b) Functional and aesthetic design.
- (c) Total cost.
- (d) Total time of performance.
- (e) Past performance.

(f) Acceptability under other appropriate criteria, as established by the requesting activity and contracting office.

j. *Contract clauses.* Attach DA Form 4075-R to all construction solicitations and contracts. Certain clauses are self-deleting and application will be determined in accordance with language contained in the clause.

k. *Construction contractor insurance.* Liability and worker's compensation insurance must be obtained by the contractor in amounts specified by the contracting officer in the contract. In no event will the amount be less than the minimum requirements established by applicable state and local regulations and laws. The contracting officer will require the contractor to provide copies of the insurance policies prior to proceeding with work under the contract.

l. Bond Requirements.

(1) The Miller Act requires performance and payment bonds for any construction contract exceeding \$25,000, except that this requirement may be waived (1) by the contracting officer for as much of the work as is to be performed in a foreign country upon finding that it is impracticable for the contractor to furnish such bond, or (2) as otherwise authorized by the Miller Act or other law. The contractor will furnish all bonds, including any necessary reinsurance agreement, before receiving a notice to proceed with the work or being allowed to start work. The amount of the performance bonds will be 100 percent of the original contract price, unless the contracting officer determines that a lesser amount would be adequate for the protection of the NAFI.

(2) The contracting officer will require payment bonds with penal sums as follows:

- (a) When the contract price is not more than \$1,000,000 the penal sum will be 50 percent of the contract price.
- (b) When the contract price is more than \$1,000,000, but not more than \$5,000,000, the penal sum will be 40 percent of the contract price.
- (c) When the contract price is more than \$5,000,000, the penal sum will be \$2,500,000.

5-15. Architect-engineer services

a. *Scope of section.* This section prescribes policies and procedures applicable to the acquisition of architect-engineer services. DODI 4105.67 and AFARS 1.9003 establishes the dollar thresholds that require accomplishment of construction and architect-engineer contracts by the APF contracting office.

b. *Policy.* Contracts will be negotiated for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices. Contracts will be structured so as to ensure compliance with Army construction standards.

c. *Selection of firms for architect-engineer contracts.* NAFIs will evaluate each potential contractor in terms of its—

- (1) Professional qualifications necessary for satisfactory performance of required services.
- (2) Specialized experience and technical competence in the type of work required.
- (3) Capacity to accomplish the work in the required time.
- (4) Past performance on contracts with NAFI/Government activities and private industry in terms of cost control, quality of work, and compliance with performance schedules.
- (5) Location in the general geographical areas of the project and knowledge of the locality of the project. This is provided that application of this criterion leaves an appropriate number or qualified firms, given the nature and size of the project.

d. *Evaluation boards.* When acquiring architect-engineer services, the chief of the contracting activity will establish architect-engineer boards to be composed of members who, collectively, have experience in architecture, engineering, construction, and NAFI related acquisition matters. Members will be appointed from among highly qualified employees of the NAFI or other activities. One member of each board will be designated as the chairperson.

e. *Evaluation board functions.* Under the general direction of the chief of the contracting activity, an evaluation board will perform the following functions:

- (1) Review the current data files on eligible firms and responses to the announcements concerning the particular project.
- (2) Evaluate the firm(s) in accordance with established criteria.
- (3) Hold discussions with the most highly qualified firm(s) regarding concepts and the use of alternative methods of furnishing the required services. Architect-engineer fees will not be considered in these discussions.
- (4) Prepare a selection report for the contracting officer recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report will include a description of the discussion and evaluation conducted by the board to allow the contracting officer to review the consideration upon which the recommendations are based.
- (5) The contracting officer will conduct negotiations with the "selected firm(s)" and, with the advice of technical and staff representatives, make the final selection.

f. Collecting data on and appraising firms' qualifications. To be considered for architect-engineer contracts, a firm must file with the appropriate office or board the SF 254 (Architect-Engineer and Related Services Questionnaire) and when applicable, SF 225 Report on Obligations).

5-16. Interior design requirements

a. Acquisitions for all interior design and kitchen design funded with NAF, regardless of whether design was done in-house (i.e., designers in the USACFSC, Field Operations Directorate) or by contract (A & E or interior design firm) will be competed and awarded as a total package. (See also para 5-14f.)

b. Items specified for purchase will be accomplished without further comparison or substitution unless such a substitution is required due to non-availability (e.g., obsolescence, out-of-production, excessive delivery time) and is first approved by the designer.

c. Splitting of design requirements or accomplishing an interior design project in phases will not be done, except when considered by the installation commander or designee to be in the best interest of the NAFI. If exception is granted, specified items in the design package will be competed among supplies that normally supply the commodity requested.

d. The integrity of the interior design package will be maintained during the acquisition process to the maximum extent possible.

e. Requirements for interior design projects must reflect approvals by the Director, CFSC Design Branch at HQ, USACFSC and approvals prescribed in AR 215-1, chapter 6.

f. During the developmental stages of an interior design project, designers will consider the following: quality, durability, maintainability, reliability, availability, reasonableness of total and unit cost in relation to the proposed design, and the cost effectiveness of the items being selected. Designers will rotate source selections and ensure selected items are in compliance with applicable construction and safety codes, standards, and regulations.

g. Requiring activities and designers should plan and coordinate execution of design projects to ensure sufficient contracting lead-time is allotted. A delay could affect availability of items, discounts, and product runs (e.g., carpet, wallcovering). Requiring activities and designers should plan execution of the design project prior to the last quarter of the fiscal year, especially if the servicing APF contracting office will be accomplishing the procurement.

Section IV

Concession Contracts

5-17. General

Concession contracts are those that a concessionaire has a right to sell a particular type of item or to provide a specific service in a designated location for a specific period of time. Concession contracts normally involve the direct sale of goods or services to authorized patrons within the military community. Service contracts, by contrast, normally provide for a service to the NAFI and, generally, the service is not sold directly by the contractor to the military community. In addition, payment provisions of a service contract usually involve payment to the contractor by the NAFI, whereas, with concession contracts, the contractor (concessionaire) typically pays a fee to the NAFI, based on a percentage of gross sales. Generally, contracts will be awarded in terms of a percentage of prospective-gross proceeds. However, contracts may be awarded requiring a payment of a flat fee when it can be justified as being more advantageous than using the percentage of gross proceeds arrangement.

5-18. Examples of concession contracts

Examples of concession contracts that are common in NAFI operations are listed below.

- a.* Operation of a beauty or barber shop.
- b.* Operation of a tour concession, ticket office, or photography studio.
- c.* Operation of vending and amusement machines.
- d.* Operation of a restaurant or snack bar.

5-19. Conditions for use

Concession contracts may be used when both of the following conditions are met:

a. The installation commander or designee has determined that NAF direct-hire is not appropriate and has issued this determination in writing.

b. Pursuant to AR 215-1, chapter 3, section IV, the installation commander has authorized the MWR activity to operate a resale activity by concession contract.

5-20. Responsibility for obtaining approvals

The requesting activity is responsible for obtaining the approvals cited in paragraph 5-19. All approvals must be attached to the purchase request when it is submitted to the NAF contracting office for action. Requirements for concessions that do not obligate NAFs do not require the signature of the fund certifying official on the purchase

request. However, the fund certifying official should be furnished a copy of the purchase request for planning and budgeting purposes.

5-21. Short term concessions

a. A short-term concession contract is established for a performance period of 10 days or less. Short-term concession contracts will be set up for payment to the NAFI on a flat fee basis or on a percentage of gross sales basis. The 10-day period of performance does not necessarily mean 10 consecutive days. For example, the contract may specify a period of every Monday for a period of 10 weeks. Such contracts usually involve the sale of items such as jewelry, artwork, and uniforms, as opposed to the examples of concession contracts cited in paragraph 5-18.

b. Short-term concession contracts of 10 days or less require the approval of the ADCFA or fund manager prior to award of the contract. All short-term concession contracts will be in writing and will be issued by an authorized contracting officer. Short-term concession contracts will also be signed by an authorized representative for the concessionaire. The only form authorized for execution of a short-term concession contract is DA Form 5756-R (Concessionaire Contract- Short Term (Nonappropriated Funds)). DA Form 5756-R will be locally reproduced on 8½-by 11-inch paper. A copy for local reproduction purposes is located at the back of this issue.

5-22. Solicitation content

Solicitation will contain schedules of prices and service charges, as appropriate, and the fee or commission to be returned to the NAFI. The offeror may be asked to insert the offeror's prices or fee, or both. Solicitations will also specify the goods or services to be supplied. Price competition may be obtained on the basis of the selling price or concession fee, or both, provided that appropriate evaluation factors are applied to make the basis for award clear. Such evaluation factors will be specified in the solicitation and an evaluation plan must be supplied to the contracting officer by the requiring NAFI when the contract requirement is submitted to the contracting officer. When a service is involved (such as the maintenance of vending machines), the Service Contract Act of 1965, as amended, may apply. If the Act is applicable, the procedures in paragraph 5-9 will be followed.

5-23. General contract requirements

Certain requirements are common to most concession contracts, regardless of the supply or service under contract. Clauses concerning the following will be included in the appropriate sections of each solicitation and resulting concession contract:

- a.* Identification of the type and extent of records that must be kept by the concessionaire.
- b.* The authority of the NAFI to audit or inspect (or to have audited or inspected) the records, premises, and operations of the concessionaire for the purpose of ensuring contract compliance.
- c.* A requirement that the concessionaire safeguard all assets in his or her possession in which the NAFI or the Government has an interest.
- d.* A requirement that the concessionaire certify the integrity of his or her financial records and reports.
- e.* Identification of reports that the concessionaire must provide.
- f.* Identification of the commission as a fixed amount or percentage of sales, as appropriate, and the method and time of payment. (Concessionaire and commission procedures for post restaurants and civilian welfare funds are contained in AR 230-81.)
- g.* A requirement that the concessionaire post in a conspicuous place a complete price list for all goods or services available. The price list must be approved by the installation NAFI council and the concessionaire must adhere to the prices that will be at a specified mark-up over cost.
- h.* A requirement that separate physical inventories will be taken of all NAFI- and Government-owned equipment at the time that the concessionaire occupies the premises and that physical inventories will be taken every six months thereafter and on the final day of contract performance.
- i.* A requirement that the concessionaire keep complete and accurate records of all transactions and that all sales are rung up in full view of the customer.
- j.* A requirement that the concessionaire furnish cash registers or similar business machines and prenumbered sales slips approved by the Activity manager, or that the concessionaire use equipment and sale slips furnished by the NAFI.
- k.* Post restaurants and civilian welfare funds will follow the requirements of this regulation as set forth in AR 230-81.
- l.* Concession contracts for amusement and vending machines meet the requirements set forth in AR 215-2 and this paragraph.

5-24. Concessionaire contract insurance requirements

a. When determined by the contracting officer, concessionaires will be required to carry the following types of insurance in amounts sufficient to protect the interest of the NAFI granting the concession and the United States:

- (1) Bodily injury and property damage liability insurance.
- (2) Workers' compensation and employer's liability insurance for their employees.

- (3) Property insurance for bailee property under their care, custody, or control.
- (4) Public liability insurance.
- b. Any required certificate(s) of insurance must be provided prior to beginning of performance.

5-25. Vending machine requirements

a. Concession contracts for vending and game machines (excluding machines from which players receive money) will include the following requirements in appropriate sections of each solicitation:

- (1) Type and number of machines to be provided.
 - (2) Locations where the machines will be placed.
 - (3) Procedures for cash collections, payment terms, meters, locks, repair, and maintenance. (See AR 215-2.)
 - (4) Procedures for making refunds to customers for money lost in machines or for damaged merchandise.
 - (5) The requirement that the concessionaire notify the contracting officer before rotating or changing machines.
 - (6) Capability of coin-counting meters to detect and reject "slugs" and foreign coins.
 - (7) Time period required for stocking, repairing, and servicing the machines.
 - (8) Temperature requirements for machine vending hot or cold foods.
 - (9) Establishment of a reporting procedure to be used if the concessionaire discovers that the machines have been vandalized.
 - (10) Electrical installation requirements.
- b. The contracting officer may find it necessary to appoint a COR for cash collections and other internal control procedures. Other requirements concerning locking devices, keys, sales accountability, cash collections, and machine malfunctions are contained in AR 215-2.

5-26. Barber/beauty shop requirements

Solicitations and resulting contracts for barber or beauty shop concessions will contain the following requirements in appropriate contract sections:

- a. The determination as to whether the operators will be required to have state licenses and/or certificates of training.
- b. Specific sanitation requirements concerning the use of clean brushes, towels, etc.
- c. Display of photographs of hair styles that meet Army appearance standards.
- d. The determination as to which personnel will be authorized to use the barber or beauty shop.
- e. Procedures for handling customers who have communicable diseases (such as scalp irritations).

5-27. Sports pro shop requirements

Clauses concerning the following will be included in the appropriate sections of solicitations and resulting contracts for the operation of a sports pro shop:

- a. Who will be responsible for the purchase of items to be sold in the shop.
- b. What type of items will be sold in the shop.
- c. Establishment of reporting procedures upon discovery of vandalism or theft.
- d. Whether the pro may have an assistant and, if so, who is responsible for the selection and supervision of the assistant.
- e. Whether the pro will be authorized honorary membership in any IMWRF facilities.
- f. Whether any sports equipment will be rented to customers and, if so, who will be responsible for maintaining the equipment.
- g. A procedure for the disposition of any unsold merchandise on hand upon expiration or termination of the contract.
- h. Whether the sports professional will give instruction in the applicable sport.

Section V

Entertainment Contracts

5-28. General

- a. Contracts for entertainment will be solicited and awarded based on the following criteria: the popularity of the entertainers and/or groups, patron preference, availability, participatory draw, profit margin, and past performance.
- b. When booking entertainment the use of agencies is encouraged when feasible.
- c. Contracting activities will, in addition to using criteria above, make price comparisons with similar acts or performers to establish a base from which negotiations may begin with individual entertainers or agencies and to subsequently determine price reasonableness.

5-29. Exclusions

This chapter does not apply to the following forms of entertainment:

- a.* Bingo.
- b.* Monte Carlo events.
- c.* Coin-operated amusement machines or gaming devices.
- d.* Entertainment arranged by authorized patrons of a NAFI for appearances at special parties.
- e.* Entertainment provided by U.S. military bands performing in their official capacity. (The provisions of this chapter, however, apply to contracts with individual members of U.S. military bands performing during their off-duty hours.)

5-30. Selection responsibility

The requesting activity and the contracting officer are responsible for the final selection of suitable entertainment. Selection requirements contained in AR 215-2, paragraphs 3-28 and 3-29, and paragraph 5-28 of this regulation will be used in the selection process.

5-31. Competition

Since an entertainer is usually available through only one agent, and because the selection is based in large part on customer preference, generally, competition is not required for the purchase of commercial entertainment. This does not permit, however, the exclusive use of one entertainer or one agent. Where there is more than one agent who can provide entertainment of equivalent quality at comparable prices in a given geographic area, the use of the available agents should be rotated. Similarly, when equivalent entertainment is available from more than one entertainer, the services of such entertainers should be rotated. Contract files will be documented to reflect the manner by which price was determined to be fair and reasonable.

5-32. Contract considerations

- a.* An entertainment contract with a talent agent may be written for multiple performance and with more than one entertainer or group covered under the same contract. Entertainment contracts with individual entertainers may be written for multiple performance locations covered under the same contract.
- b.* Contracts may be written with entertainers for a specified period of time with delivery orders issued against the contract for various performances.
- c.* When the entertainment requires the use of stage hands, audio or lighting technicians, or other service personnel (as may be necessary with a dinner theater or floor show), the Service Contract Act may apply. In that event, the procedures in paragraph 5-9 are to be followed.
- d.* When determined by the contracting officer to be in the best interest of the NAFI, contracts for entertainment will require that the contractor provide and maintain during the entire performance period at least the minimum amounts of insurance for public liability insurance, property damage insurance, motor vehicles liability insurance, and bodily injury insurance as required by state and local law.
- e.* A cancellation clause will be included in all entertainment contracts substantially the same as below.
"The contractor shall notify the contracting officer immediately of any cancellation, or potential cancellation, and make a reasonable effort to obtain substitute entertainment which is equal or better. All such cancellations must be in writing and must provide just cause for non-performance and must prove satisfactory to the contracting officer or the conditions of the Liquidated Damages clause, shall apply. The contracting officer will notify the contractor at least 72 hours in advance of start of performance that the Fund intends to cancel the performance. "
- f.* The contracting officer will calculate liquidated damages based on amount of revenue lost in terms of sales, personnel salaries, performance period, and any other direct or indirect costs incurred as a result of non-performance or late performance of the contractor. A liquidated damages clause will be included in all entertainment contracts substantially the same as below:
"Liquidated damages. If the performer fails to perform in accordance with this contract, liquidated damages will be assessed at a rate of _____. The contractor will not be charged liquidated damages when the failure to perform arises out of causes beyond the performer's control and without fault or negligence of the performer (e.g., fires, floods, epidemics)."

5-33. Copyright and royalty clearances

Clearances are required before copyrighted material can be performed on stage. Procedures for obtaining these clearances are contained in AR 215-2, paragraph 6-86, et. seq. NAF contracting personnel and NAFI managers who are involved in the selection and purchase of commercial entertainment should be familiar with these procedures. Copyright and royalty clearances will be included in the contract file.

5-34. Overseas considerations

MACOMs overseas may issue supplements to this chapter. However, any such supplement will be submitted to USACFSC NAF Contracting, Policy Office for approval prior to implementations.

5-35. Labor union contracts

NAF contracting officers will not sign labor union contracts for commercial entertainment.

5-36. Performance evaluation

Performance evaluations for NAF entertainment contracts will be accomplished in accordance with AR 215-2, paragraph 3-29.

Section VI

Amusement Companies and Traveling Shows

5-37. Responsibility and approval

a. Responsibility. It is the responsibility of the NAFI manager to determine and to justify the need for carnivals, circuses, rodeos, and similar amusements. It is also the responsibility of the NAFI manager to obtain the required approvals. The installation commander will ensure that sufficient military law enforcement personnel are available to maintain order and control. When appropriate, assistance from both local and state law enforcement agencies may be requested.

b. Approval. Prior to soliciting for these types of contracts, approval must be obtained in writing from the installation commander or designee as to whether such activities can be held on the installation.

5-38. Sources

Information on carnival, circus and rodeo operators, entertainers, and similar amusement companies may be obtained from local and state fair directors or managers, local arena or auditorium managers, or other Army installations, which have staged similar activities.

5-39. Competition

Competition is required when contracting for amusement and traveling shows, except that requirement for nationally known firms need not be competed. Since operators of these nationally known shows often make their bookings during winter months, these contracts should be initiated at least six months to a year in advance of the desired performance date.

5-40. Determination of contractor responsibility

Industry practice reflects that the bona fide nature of an operator, as to legitimacy and reputability, should be verified to avoid disreputable (or nonresponsible) contractors. In order to determine the legitimacy, reputability, and safety record of the operator, the contracting officer will require at least three references from the operator. These references will include the name, address, and telephone number of a person to contact where the show has recently performed. References will not include performances that took place more than 5 years prior to the date on which the references are provided. References from public institutions (such as a county government) are preferred. In addition, the police department of the city or county that is referenced should be contacted for additional information.

5-41. Copyright and royalty clearances

Copyright and royalty clearances may be required for amusement company and traveling show contracts. If they are applicable, the procedures contained in AR 215-2, paragraph 6-86, et. seq will be followed.

5-42. Solicitation and contract requirements

a. General. The primary considerations in amusement and traveling show type contracts involve property damage, injury to spectators and performers, and control of the money. Provisions concerning indemnification of the NAFI and the U.S. Government against liability for injury to property or personnel, and control of the monies must be included in all solicitations and resulting contracts. The Service Contract Act is applicable, and the procedures in paragraph 5-9 will be followed. In addition, information concerning the amount of time to be allowed for the operator to set up and teardown must be included. Army personnel will not be used to assist in any required construction. If food is to be sold at the event, local food handling and storage requirements are applicable.

b. Specifications. Detailed specifications must be written to include the unit prices for merchandise and food sold, and fees or charges for events, rides and activities. Specifications will also include the number of rides, acts, exhibits, or games, as applicable, and ticket prices. Percentage of sales may be negotiated or set forth in the solicitation. In lieu of a percentage of income generated by carnival games, the contracting officer may require the contractor to pay the NAFI a negotiated fee per frontage foot for the game.

c. Cash accountability.

(1) Each solicitation and resulting contract will provide that the NAFI manager will provide one or more cashiers to exchange cash for tokens, coupons, or serially numbered tickets of various denominations, that will be provided by operated events and activities. Tokens, coupons, or tickets will be provided by the NAFI and individualized in such a way as to avoid unauthorized reproduction. At each exhibit, show, ride, or admission gate, the coupon, token, or ticket will be deposited into a locked container. This will preclude the handling of cash by concessionaires and will facilitate reconciliation of accountability of proceeds.

(2) Daily reconciliation of accountability of proceeds must be accomplished by the NAFI. Settlement and distribution of proceeds to the carnival amusement company will not be used as a medium of exchange for the events and activities provided by the carnival amusement company. At the end of each day or performance, the cash and contents of the containers will be collected, counted, and verified by a representative of the NAFI, a representative of the contractor, and a disinterested person. Cash will then be taken to the fund cashier for safekeeping.

(3) All cash collections will be accounted for and reported in accordance with applicable NAFI accounting procedures prescribed in AR 215-5.

d. Insurance.

(1) Contracts will require that the contractor have workers' compensation insurance, property damage insurance, and personal injury (including death) insurance in the amounts required by state and local laws of the jurisdiction in which the installation is located, regardless of whether the state or local law apply on the installation. Similar laws in overseas locations will also be observed.

(2) Amusement company contracts must include the requirements that—

(a) Public liability insurance in amounts specified by the contracting officer be provided by the contractor.

(b) The required certificate of insurance is provided prior to beginning of performance.

e. Restrictions. The following clause will appear in full text in all contracts for amusement companies and traveling shows: "RESTRICTIONS. The NAFI reserves the absolute right to prohibit the contractor from beginning to operate or continuing to operate any show, riding device, concession, or attraction which the contracting officer or the contracting officer's authorized representative deem to be objectionable, unethical, unsafe to operate, or contrary to federal laws, Army regulations, and/or the laws of the State of _____. The contractor agrees that no beverages of any alcoholic content, narcotics, dangerous drugs, or other controlled substance may be dispensed by the contractor or any of the contractor's employees to any person on the military installation."

5-43. Special requirements for the care and custody of animals

When animals are bought onto the Army installation in connection with a circus, carnival, rodeo, or similar event, clauses concerning the following requirements, will be contained in the contract:

a. The contractor must present current immunization certificates for all animals.

b. The post veterinarian must have access to all animals in the event that examinations are required.

c. Any animal normally considered dangerous must be safely secured in a corral or in a cage. This includes, but is not limited to lions, tigers, bears, chimpanzees, bulls and horses.

d. The animals must be well fed and well cared for, and the contractor will not be in violation of any laws pertaining to the humane treatment of animals.

e. The contractor will be required to provide necessary equipment, medication, and personnel capable of administering medication to tranquilize or subdue any contractor-provided animal brought onto the installation in case a secured animal escapes. Medication and type of equipment may be subject to inspection by the post veterinary service officer for adequacy. Introduction and safekeeping of such equipment will be coordinated with the post provost marshal.

5-44. Additional contract considerations

Clauses concerning the following should be incorporated into the contract, as applicable:

a. Whether a performance bond should be required, and if so, in what amount.

b. Whether the contractor will be authorized to distribute free samples of food, beverages, or other products to patrons at the event.

c. The furnishing of utility services to the contractor and the determination as to who will bear the expenses of hook-up.

d. The designation of the location where the contractor's equipment is to be stored, and the determination as to who is responsible for safeguarding it.

e. The determination as to who will bear the expense of advertising the event and the type of advertising that will be allowed.

f. The determination as to whom provides the dumpsters for the deposit of trash, debris, and animal waste, and who will be responsible for transporting the dumpsters to the appropriate disposal point.

5-45. Type of contract

Contracts for these events will be negotiated and awarded in terms of a percentage of gross sales, except that a contract

requiring payment of a flat fee per event or activity per day to the NAFI may be used if the use of a percentage-of-gross contract is not feasible based on market considerations. If a flat fee contract is used, then cash may be used as a medium of exchange at events and activities.

5-46. Evaluation of offers

a. The following factors will be considered in the evaluation of offers received and will be set forth in Section M of the solicitation. Below are minimum requirements and other factors should be added as necessary.

- (1) Contractor responsibility (para 5-40).
- (2) Type and variety of exhibits offered.
- (3) Type and variety of games offered.
- (4) Type and variety of rides offered.
- (5) Type and variety of acts offered.
- (6) Number of rings (if a circus).
- (7) Percentages of gross proceeds offered or fee payable to the NAFI (if this figure is not part of the contractor's requirements established in the solicitation).

b. In terms of safety and patron enjoyment, contractor responsibility is the most important evaluation factor.

5-47. Contract administration

Depending upon the size of the event under contract, at least one COR will be appointed for the purpose of coordinating set-up and tear-down and monitoring contractor performance. In determining who should be appointed as the COR, the contracting officer should consider those individuals who have knowledge in the areas of safety and safety inspections, security, sanitation standards, electrical standards and requirements, construction standards and procedures, etc., as appropriate to the type of event under contract. (See para 7-2.)

Section VII

Resale-Consumables and Subsistence Contracts

5-48. General

a. Resale is the act of selling again, products purchased for that purpose. There are two categories below that fall within the general category of resale that require separate consideration.

(1) *Consumables*. Consumable items are products that lose their identity during use and as a result of the resale process, or are consumed in the course of daily business. These are classified as non-edible items. Consumable items include, but are not limited to, paper products, aircraft fuel, postage stamps, and airline tickets.

(2) *Subsistence*. Subsistence includes all food and beverage items. These are classified as edible or drinkable items.

b. For the purpose of this section, resale, includes all items (in addition to subsistence) that are to be resold (e.g., sporting goods for pro shops: bowling balls and shoes; gift shop items; tobacco products; T-shirts; sweatshirts; hats; lumber; automotive care products).

c. Purchasing for subsistence, resale, and consumable items will be made by the use of negotiated fixed-price contracts.

d. There is no restriction for requesting the purchase of items for resale purposes on a "brand name" basis. Requirements are generally based on customer preference and/or demand. Written justification for purchase of brand name items for resale is not required, except as stipulated in paragraph 5-49 (consumables). However, the requesting activity is responsible for identifying the brand name item(s) for resale on the purchase request. Price competition on requirements for "brand name" items will be obtained among qualified suppliers who normally handle that brand. Award is generally made to the supplier who can furnish the desired brand name items at the best price and within the time required. For purchases of other than brand name resale items, specifications should reflect the minimum needs of the requiring activity so the NAFI can benefit by obtaining the best purchase, price and other factors considered. This will allow for a better markup in terms of profit to the resale activity.

e. Private label brands are distinguished from brand name items for purposes of this section. Private label brands are usually a particular distributor's or supplier's special line of products. Private label brands resulting in sole source purchases must be justified in writing, even if items are for resale.

f. Items purchased for resale identified by the use of specifications, purchase descriptions, or on a brand name basis will normally be made on a competitive basis. The competition requirements set forth in paragraph 1-11 will apply to all purchases of resale, consumables, and subsistence items.

g. The DA Form 4067-R will be used for purchases for resale items and contract clauses will be attached as determined by the contracting office.

5-49. Consumables

Purchase of consumable items will be made on a competitive basis to the maximum extent practicable. Request for brand name consumable items must be justified in writing. The written justification will be attached to the purchase

request and state what specific or unusual need makes the required brand name product(s) necessary. The justification must be based on fact and not personal preference.

5-50. Subsistence

a. General. Purchasing subsistence items may be one of the more complicated acquisitions made through the use of small purchase procedures. The method for purchasing subsistence items varies slightly from that of other small purchase procedures.

b. Specifications.

(1) Specifications for subsistence should be written in accordance with generally accepted industry standards. While it is important to define exactly what is needed, the specifications should not be so stringent as to limit the choice of suppliers. For meat products, the Institutional Meat Purchase Specifications (IMPS), and the National Association of Meat Purveyors (NAMPS), approved by the United States Department of Agriculture (USDA), are generally sufficient. There is no prohibition against requesting brand name items when responding to customer preference determined by national or local survey or by customer demand. For these request no written justification is required. However, the purchase request should contain a statement that customer preference is the basis for the brand name request.

(2) Clear and reasonable specifications are useful tools in establishing quality requirements and provide a base from which to determine responsible suppliers. If specifications are too stringent, competition is unnecessarily restricted, and the cost of inspecting such goods is higher than that of inspecting goods ordered by using industry standards. Reasonable specifications set a standard that both parties know what is expected when the product is ordered and when it is received. The Veterinary Service representative may be used as a source of information for specifications and inspection procedures to be followed.

(3) Sample specifications are—

(a) # 109 oven ready rib, 18 to 22 pounds yield grade 2 or 3, USDA choice, vacuum packed, chilled, minimum age 14 days not to exceed 21 days.

(b) Oregon green beans, U.S. Grade A Fancy, french style, #10 can, drained weight 6 lbs., 10 oz.

b.1. Samples and trial orders. It is sometimes possible to define required quality by obtaining samples or trial orders. Once a product is deemed suitable, the requiring activity should submit a statement with their purchase request, stating that the products desired are those which are similar/identical to the quality of items selected from analysis of the sample.

c. Purchasing procedures. Subsistence purchases normally have a short lead time. Therefore, it is extremely important for contracting personnel to be totally familiar with the products and to know who the responsible suppliers are.

5-51. Comparative pricing

a. Comparative pricing must be used on all subsistence purchases, regardless of the estimated dollar amount. Market prices of goods fluctuate rapidly due to the basic supply and demand factors influenced by crop yields, and the inherent labor, transportation, processing, and distribution costs. Due to these fluctuations, previous prices paid are not necessarily a good indication of what constitutes a current fair and reasonable price. Previous cost records, however, can serve as an indicator of significant price changes for seasonal goods.

b. It may be to the NAFIs advantage to enter into fixed price contractual agreements with vendors to supply certain subsistence items for a short period of time. Since vendors may attempt to protect themselves against market fluctuations, prices quoted on such a solicitation may be higher than the current market price of goods. The convenience of having a firm price for a definite period of time must be weighed against any higher prices quoted by vendors. Requirement contracts may be issued for subsistence items. Such contracts will be written using DA Form 4069-R (Solicitation, Offer and Award (Nonappropriated Funds)), DA Form 4070-R (Solicitation Instructions and Conditions (Nonappropriated Funds)), DA Form 4071-R (Schedule (Nonappropriated Funds)), and DA Form 4074-R (Contract Clauses (Nonappropriated Fund Supply and Service Contracts)).

5-52. Price evaluation

a. The evaluation of prices quoted for resale and consumable items should include the following factors:

(1) Discounts offered for quantity of items ordered.

(2) Shipping charges.

(3) Minimum order charges.

(4) Time in which delivery can be made and whether there is a charge for accelerated delivery.

b. There are additional factors that can affect the determination of fair and reasonable prices for subsistence items. Explained below are factors such as quality grades for meats, fruits, and vegetables; yield, consistency (flavor and saleability); and conformance to specifications. Meat prices should be quoted by the pound, and not by the portion or individual unit. Prices quoted for canned fruit and vegetables should indicate whether they are for total can weight (including the liquid in which the items are packed) or drained weight.

(1) Quality is the degree of excellence of the product. Quality refers to the suitability of a product for its intended

use. The closer that a product comes to being suitable, the greater its level of quality. For meat, the USDA assigns quality grades and yield grades to carcasses at the packing house. Table 5–1 gives a brief description of quality grades of beef, pork, lamb and veal. A carcass is the processed, whole, market-ready animal after slaughter. Carcasses designated as prime are of superior quality, expensive and not always readily available for retail purchases. Products graded choice is readily available and are normally purchased by DOD activities. Products graded good are acceptable and are frequently the quality used by fast food restaurants. Standard and commercial grades are normally for institutional use and, with utility grade, appear as potted meat products. Cutter and cannery grades are generally used for dog and cat food or similar type items. Tables 5–2 and 5–3 give a brief description of quality grades for canned fruits and vegetables and a listing of standard can designations.

Table 5–1
Quality grades: meat carcasses

Grade	Beef	Veal	Lamb		Pork	Grade
PRIME	x not readily available	x	x	=	x	US 1
Choice	x	x	x not readily available	=	x	US 2
Good	x	x not readily available	x not readily available	=	x	US 3
Standard	x	x not readily available	x not readily available	=	x	US 4
Commercial	x	no equivalent grade	no equivalent grade		no equivalent grade	
Utility	x	x not readily available	x not readily available	=	x	US 5
Cutter	x	no equivalent grade	no equivalent grade		no equivalent grade	
Canner	x	no equivalent grade	no equivalent grade		no equivalent grade	

Notes:

x: grade is available =: is the same as

Table 5–2
Canned Fruit and Vegetable Grades

Grade: US Grade A Fancy

Quality Characteristics: Highest quality; clear liquid, uniform color, appropriate size, tender, blemish free

Grade: US Grade A

Quality Characteristics: Essentially same characteristic as fancy but wider tolerance range for defects

Grade: US Grade B/Extra Standard

Quality Characteristics: May lack appropriate form or color, contain slight blemishes, and vary in size

Grade: US Grade C/Standard

Quality Characteristics: Edible and wholesome but lacking in quality or above grades, may lack tenderness and contain broken items

Grade: US Substandard

Quality Characteristics: Edible and wholesome but lacking required quality of Grade C products

Table 5-3
Standard Can Designations

Can Size	Capacity	Pack per Case
No number	6 oz	48
303	16 oz	24
2½	28 oz	24
5	46 oz	12
5 squat	66 oz	6
10	96 oz	6

(2) Yield is a specific term referring only to beef carcass cutability and denotes the number of portions that can be derived from the larger piece before it is cooked. Yield grades are established by the USDA at the packing house and are numbered 1 through 5. Yield grade 1 carcasses have the highest yield; grade 5, the lowest. Yield grades are independent of quality grades discussed in subparagraph (1) above.

(3) Consistency is the degree of variation among like products over a period of time. If a product is not dependable in consistency and is not flavorful, the saleability is reduced significantly, thus resulting in uneconomical purchasing.

(4) The final major criterion is conformance to established specifications. Domestic products that are nongraded and products which are not in accordance with the specifications should not be purchased. In its more general sense, regarding meat, conformance also applies to appearance, texture, cutability, and the amount of fat.

5-53. Inspections

a. Subsistence suppliers, such as a meat packer or dairy, that are engaged in processing a food product, must pass a Federal sanitation inspection before DOD activities are authorized to purchase from them. If a supplier is not Federally inspected, the supplier will normally need to have a DOD sanitary inspection and be listed in the "Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement" published by HQ, U.S. Army Health Services Command and major overseas commanders, before DOD activities are authorized to purchase from them. The Veterinary Services representative will provide guidance to purchasing officials on procedures and exceptions. Figure 5-1 provides addresses from which lists of inspected suppliers may be obtained.

b. All food products ordered for an activity must be inspected by the post Veterinary Service representative before delivery is made to the final destination. Under unusual circumstances when the Veterinary Service representative is not available, the goods may be received if the delivery ticket and receiving report are marked "received subject to Veterinary Service inspection." Goods received in this manner should not be used until the Veterinary Service representative has inspected them. The final decision with respect to the wholesomeness and acceptability of the products remains with the military veterinary officer. A copy of all delivery tickets must be provided to the Veterinary Service inspector.

5-54. Approval authority

The Assistant Director of Community and Family Activities (ADCFA) has unlimited dollar approval authority for resale items.

5-55. Foreign food items

These products carry neither quality grades nor yield grades. However, they are checked and inspected for wholesomeness at the port of entry into the United States. Since the quality is generally unknown, caution should be exercised before the purchase of a foreign food item is made.

5-56. Sources of subsistence items

Subsistence items may be obtained from the installation Troop Issue Support Activity (TISA); the commissary; the Army and Air Force Exchange Service; local purveyors, brokers, distributors; packers; and manufacturers. Commissaries issue BPAs with suppliers for items that are sold in the commissary. NAF contracting personnel may be appointed BPA callers against these BPAs to simplify their subsistence purchases. In addition, Troop Issue Support Activities, supplying the dining facilities, have ordering officers who place orders against subsistence contracts issued by the Defense Personnel Support Center. It can sometimes be arranged for NAF contracting or club personnel to place orders with the Troop Issue Support Activity, thereby deriving benefits from their contracts as well. When NAFIs order goods from the commissary, DA Form 3161 (Request for Issue or Turn-In) may be used as a purchase requisition form.

5-57. Procurement of alcoholic beverages

Alcoholic beverages are included in the definition of subsistence.

a. Contracts for the procurement of alcoholic beverages will be solicited, awarded, and administered by a NAF or

APF contracting officer. The rules of competition apply in accomplishment of these purchases, except where restricted by federal laws, treaties, or agreements. When purchasing by brand name, no written justification is required.

(1) **(Rescinded.)**

(2) **(Rescinded.)**

(3) **(Rescinded.)**

(4) **(Rescinded.)**

(5) In the state of Washington, Army NAF procurement of alcoholic beverages will be done in accordance with the Memorandum of Agreement (MOA) with the Washington State Liquor Control Board and the United States Department of Defense, dated March 15, 1987.

(6) Purchases of wine and malt beverages will be made from in-state sources. In the states of Alaska and Hawaii, the purchases of all alcoholic beverages for resale will be made from in-state source.

b. **(Rescinded.)**

c. *Vendor promotions.* See AR 215-1, paragraph 17-4 and AR 215-2, chapter 4 for policy on vendor promotions of alcoholic beverages.

d. **(Rescinded.)**

Section VIII

Supply and Equipment Contracts

5-58. General

This section primarily addresses contracts for off-the-shelf commercial supplies and equipment. An off-the-shelf item is produced and placed in stock by a supplier before orders are received. These items are primarily designated for sale to the general public. Much of this section, however, is also applicable to the previous section on resale and consumable contracts.

5-59. Supply contracts involving services

a. When a contract involves the performance of a service, such as design and printing printed materials (e.g., menus, flyers, tickets, etc.), the contract will be considered to be a supply contract since the result of the contract is a tangible end product. This is not the same, however, as a consultant contract under which a written report is delivered. In this instance, the contract purchases the expertise of the contractor, and the report is merely tangible evidence of the expertise.

b. When installation-type services are involved in furnish-and-install supply contracts, the contracting officer may request that suppliers separate the supply costs from the installation costs in their quotations or proposals. The contracting officer will then determine the magnitude of the service portion of the requirement and possible applicability of the Service Contract Act and/or other applicable labor provisions (see para 5-9).

5-60. Delivery schedules

a. *Establishing the schedule.* When establishing the delivery schedule, the following factors should be considered:

(1) Urgency of need.

(2) Production time.

(3) Market conditions.

(4) Transportation time.

(5) Administrative time for receiving offers, evaluating them, and awarding a contract.

(6) Start-up or set-up time for the contractor.

b. *Expressing the schedule.* Delivery schedules may be expressed in the following ways:

(1) By specific calendar dates.

(2) By specific periods from the date of the contract.

(3) By specific periods from receipt of notice of award by the contractor.

(4) By specific periods after the contractor receives orders placed against the contract.

5-61. Variation in quantity

Fixed-price supply contracts may authorize acceptance of a variation in the quantity ordered as long as the variation is caused by conditions of loading, shipping, packing or by allowances in manufacturing processes. When a variation is allowed, it will be stated as a percentage (which may be an increase or decrease or combination of both). There will be no standard variation percentage, it should be based on industry practices for the item involved and should only be large enough to provide reasonable protection to the contractor.

5-62. Free on board (F.o.b.) point

a. The F.o.b. point is used to determine the responsibility and basis for payment of freight charges and the point at

which title to the items ordered passes to the NAFI. For NAF contracts, the F.o.b point will be identified as either F.o.b origin or F.o.b destination.

b. F.o.b. destination is preferred. This means that the supplies will be delivered to the destination at the contractor's expense. The NAFI is not responsible for transportation charges incurred before delivery unless the charge is a result of an NAFI-directed change. The NAFI takes title to the items upon acceptance at the time of delivery.

c. F.o.b. origin means that the NAFI ultimately pays the freight charges even though the charges may have been prepaid by the contractor. Use of this method is discouraged because the point at which the NAFI takes title to the items is often disputed, and problems with damaged merchandise are extremely difficult to resolve. Technically, the NAFI takes title when the contractor delivers the items to the carrier, and any damages incurred after the carrier receives the shipment must be resolved between the NAFI and the carrier. When quotations are received as FOB: origin, contracting personnel are to request the vendor provide a separate quotation for estimated transportation charges to delivery destination. The estimated transportation charges will be recorded with the other quoted prices on the solicitation abstract sheet. If determined that it is to the NAFI's advantage to have the vendor ship the goods prepaid, the purchase document will include the following statement in the schedule:

F.o.b. _____(contracting officer to fill-in the F.o.b. point). Ship transportation prepaid and adds transportation charges to invoice as a separate item. ESTIMATED TRANSPORTATION CHARGES \$_____.

d. When a contract contains estimated transportation charges, the central accounting office is authorized to make payment not to exceed 15% of the estimated transportation charges, or \$50.00, whichever is lesser, without a modification (DA Form 4073-R).

5-63. Shipments

a. Shipments made within CONUS are usually made by truck. Either the contractor's own truck or a commercial carrier may transport goods for the contractor. If the requesting activity wants the supplies or equipment delivered inside the building, the contract must specify "inside delivery." There may be an additional charge. If inside delivery is not specified, "tailgate delivery" may be made, resulting in the shipment being deposited on the loading dock. Delivery addresses contained in the contract for shipments made by truck will include a street address, and building and room numbers.

b. Contractors may ship supplies by Parcel Post when items ordered are within the mailing limitations set by the U.S. Postal Service. Contractors using Parcel Post will not be allowed to use Army indicia. On certified or registered mail shipments, the delivery address should include a street address and building number.

c. Regardless of the method of conveyance, delivery addresses shown on the contract will be as complete as possible and in a "civilian" form. Office symbols will not be used.

5-64. Inspections

Supply and equipment contracts will contain a clause giving the NAFI the right to inspect and accept or reject items in order to ensure that the NAFI receives exactly what it purchased. When an off-the-shelf item is purchased, it is normally inspected at the destination. (Supplies shipped overseas are also inspected at the port of embarkation for any apparent exterior container damage.) The extent of the inspection depends upon the item being inspected. The inspection should be thorough enough that it can be determined whether the item conforms to the specifications. Under fixed-price supply contracts, the cost of correcting or replacing items that fail to conform is borne by the contractor.

5-65. Defects

Defects in the product can constitute grounds for rejection of the item. Patent defects, such as items damaged in shipment or items with parts clearly missing, are generally evident upon the initial inspection. Latent defects are not often evident upon first visual inspection and may not be noted until after the item has been accepted and paid for. Since latent defects occur more often with equipment than with ordinary supplies, all equipment ordered should be put through a test run upon receipt to ensure that it works as it is expected to. If this cannot be done, the receiving ticket should be noted "received and accepted pending inspection." A full inspection should be accomplished promptly in order to ensure that any defects are reported to the contractor within a reasonable period of time. A prompt inspection should also reveal concealed damage that was not evident upon initial receipt. Any defects or damages noted will be reported to the contracting officer immediately to allow the contracting officer to reject the items and to require corrective action in a timely manner.

5-66. Nonconforming items

a. Nonconforming items are not necessarily defective. For example, dark rum is ordered, but light rum is delivered. Acceptance of nonconforming items is discouraged but not prohibited, and the contracting officer is responsible for their acceptance or rejection. In determining whether to accept or reject them, the contracting officer will base his or her decision on the following:

- (1) An explanation as to how the item nonconforms to specifications and how extensive the nonconformance is.
- (2) Advice from the receiving activity on whether the item is safe to use and will perform its intended task.

(3) A recommendation from the receiving activity (with supporting documentation) on whether to accept or reject the item.

(4) The nature and extent of the contractual adjustment that will result from either decision.

b. If the decision is made to accept the item, the contracting officer will seek an equitable adjustment in the price of the item and negotiate any other adjustments necessary as a result of acceptance. If the decision is made to reject the item, the contracting officer will so notify the contractor and give the contractor the opportunity to correct the problem, if the correction can be made within the required delivery schedule.

5-67. Rejection procedures

a. Burden of proof. The NAFI has the burden of proving that the items do not meet specifications. This becomes especially difficult when specifications are ambiguous. The general rule is that an ambiguity will be interpreted against the writer of the specifications, and if the contractor's interpretation is a reasonable one, that interpretation will prevail.

b. Procedures. The contracting officer will notify the contractor promptly when items are being rejected, giving the reasons for the rejection. This notification need not be in writing unless delivery was late without an excusable cause or the contractor has repeatedly delivered nonconforming or defective supplies. Whenever any items are rejected, the contract file will be documented to reflect that a rejection occurred, the basis on which the items were rejected, and the corrective action taken.

5-68. Improper rejection of supplies

If the NAFI improperly rejects an item as the result of an improper inspection, the contractor has remedies which may be pursued. The nature of the remedy depends upon the action taken by the NAFI after the improper rejection. If the NAFI requires that the contractor replace or rework the items, it may be considered to be a constructive change. If the NAFI suspends work on additional items, the contractor is entitled to an equitable adjustment. And if the NAFI does nothing, the rejected items will be considered to have been terminated for convenience. The burden of showing that the NAFI inspection was improper is borne by the contractor who must prove that the tests were not performed properly or provided erroneous results.

5-69. Acceptance

a. Once items have been accepted, the acceptance is considered final (unless otherwise provided in the contract) except for latent defects, fraud, or gross mistakes amounting to fraud. Consequently, once the NAFI has accepted the shipment, it cannot be rejected later unless the acceptance can be voided because of one of these exceptions. If a defective or nonconforming item is not rejected within the time provided for in the contract or in the absence of such a provision, within a reasonable amount of time, the NAFI will be considered to have accepted it.

b. If the NAFI intends to void an acceptance because of a latent defect, it must prove that the defect exists, existed at the time of acceptance, and was not evident at the time of initial inspection. In order to do this, the NAFI must define what a reasonable inspection is and why it would not have revealed the defect. Unless the contract specifies otherwise, the contractor is liable for latent defects at any time after acceptance, including after the expiration of any applicable warranty.

c. If the NAFI proposes to void an acceptance on the basis of fraud, it must prove that the contractor intended to deceive the NAFI or misrepresented a fact on which the NAFI based its acceptance. If the NAFI alleges a gross mistake amounting to fraud, it does not have to prove intent to deceive. However, the mistake or misrepresentation must be in regard to failure to meet specifications.

5-69.1. Receiving reports

a. Upon receipt, inspection and acceptance of goods and services, the receiving activity will prepare a receiving report for all goods received and services performed. Receiving reports may be prepared using the DA Form 4067-1-R or the 4067-R by completing the appropriate blocks. In the alternative, DD Form 250 (Material Inspection and Receiving Report) may be used for partial or final deliveries.

b. When goods and services are received as a result of a BPA call or a utility services-type contract, receiving activities may utilize the vendor's delivery ticket or invoice as the receiving report document. Receiving activities will review the delivery ticket or invoice to ensure that it accurately reflects the quantity, quality, and pricing data of the goods and services ordered and received. The receiving activity will note on the delivery ticket, any shortages or damages found, and have the delivery truck driver initial all copies of the delivery ticket(s) or invoice(s). When using the delivery ticket or invoice as the receiving report, authorized receiving activity personnel will sign all copies of the delivery ticket or invoice and state that the goods and services have been received, inspected, and accepted.

5-70. Warranties

a. The kinds of defects covered under a warranty depend upon the warranty clause. The defects covered in the typical supply warranty clause are those of defects in material and workmanship. If the defect discovered is covered under the warranty, it does not matter whether it is called a patent or a latent defect, since the contractor has warranted the items to be free from defects and is liable for their correction or replacement.

b. The contractor is liable under the warranty clause for only the defects covered by the warranty. Consequently, the contractor may not be liable for a covered defect if the cause of the defect is excluded from coverage. Even when the defect and its cause are covered by the warranty, the NAFI may lose its protection by improper installation, misuse, abuse or alteration of the product. It is therefore necessary that everyone understand the coverage and conditions of the warranty.

c. Warranty clauses should state when coverage begins and ends, and the time in which notice of a defect will be given to the contractor. For example, the warranty period may begin upon delivery, upon installation, or within a stated number of days after delivery, and extend through a specified period of time expressed in terms of days, months, or operational hours. When a period of time is given in which defects are to be reported to the contractor, the NAFI has the entire period of time to do so. For example, if the NAFI has a year in which to report a defect, it may report the defect anytime within that year. It is wise, however, to report a defect promptly after it is discovered.

d. In filing a claim pursuant to a warranty, the NAFI must prove all portions of the claim. The NAFI must show that—

- (1) The defect exists.
- (2) The defect is warranted.
- (3) It resulted from a warranted cause.
- (4) It arose during the warranted period.
- (5) The contractor has received proper notice.

e. The basic remedy provided under a typical warranty clause requires the contractor to replace or correct defective supplies, or to reduce the price if the NAFI wishes to keep the supplies without correction or replacement. If the NAFI requires correction or replacement, any transportation charges involved will be borne by the contractor. If the contractor fails to replace or correct warranted defects within a reasonable time, the NAFI may do so itself and charge the contractor the replacement costs. If the NAFI decides to keep the items without correction, an appropriate equitable adjustment is the difference between the contract price and the value of the items to the NAFI.

5-71. Discounts

a. *Prompt payment discounts.* These involve a contractor-established percentage that may be deducted from the contract price, if payment is made within the time specified by the contractor. Because the Prompt Payment Act of 1982 (PL 97-177, as amended) requires that bills be paid on time, prompt payment discounts offered by contractors may not be considered in the evaluation of offers for supplies.

b. *Volume discounts.* Volume discounts involve price reductions offered by a contractor for bulk purchases. These discounts are normally stated in terms of reduced prices for increased quantities, such as shown below.

Table 5B

Volume discounts

Quantity	Price
1 to 10	\$5.00 each
11 to 20	\$4.50 each
21 to 30	\$4.00 each, etc.

c. *Chain discounts.* Manufacturers often offer “successive” discounts from a published price list. These discounts are shown in sequence, and are usually written as “50%/10%/5% off list.” In computing the price of an item that a chain discount applies, the following procedure should be used:

- | | |
|---|-------------------------------------|
| (1) First discount | 100% |
| | –50% |
| | 50% (.50) |
| (2) Second discount | 100% |
| | –10% |
| | 90% (.90) |
| (3) Third discount | 100% |
| | –5% |
| | 95% (.95) |
| (4) Multiply the discounts to determine the net rate— | $.50 \times .90 \times .95 = .4275$ |
| (5) To find the discounted price of the item, multiply the price shown on the price list by | .4275. |

5-72. Federal supply schedules (FSS)

a. *Types of schedules.* Federal supply schedules (managed by GSA) provide a simplified method of acquiring

commonly used supplies and services at prices associated with volume buying. There are three types of Federal supply schedules: single-award schedules, multiple-award schedules and new item introductory schedules (NIIS). Their use is not mandatory for NAFIs—it is optional.

b. Single-award schedules. These schedules cover contracts made with a single supplier for delivery to geographic areas defined in the schedule. Each schedule lists the supplies or services covered and the prices. Geographic areas are determined on the basis of the location of the receiving activity, not the ordering office.

c. Multiple-award schedules. Multiple-award schedules cover contracts made with more than one supplier of equivalent supplies or services. Prices may vary among the contractors, but they will all deliver within the same geographic area.

d. New item introductory schedules. These are used to introduce new or improved products into the federal supply system. The schedules list brand names of products available from various suppliers. NIIS are published approximately four times a year and are cumulative.

e. Obtaining the schedules. NAFIs wishing to obtain the schedules may do so by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Services, Building 41, Denver Federal Center, Denver, CO 80225. Copies of GSA Form 457 and the Federal Supply Schedule Program Guide (which contains a listing of schedules) may be obtained from the same address.

f. Using the schedules. Orders are placed directly with the contractor and must contain both the GSA contract number and the local delivery order number. Contracting officers perform contract administration on individual orders and deal directly with the contractor (not GSA) concerning contractor performance. Delivery orders against GSA contracts will be written in accordance with paragraph 4-17 and any additional requirements of the applicable Federal supply schedule. The fact that a company has been awarded a GSA contract does not provide justification for a sole source acquisition.

Section IX

Commercial Credit Card Contracts

5-73. General

NAFIs may contract for local commercial credit card services (accounts receivable) when this is determined to be in the best interests of the NAFI. Such contracts will be written for an initial one-year period and may be renewed annually up to 5 years, if the appropriate option clause is included in the contract. Commercial credit card services may supplement or replace existing in-house charge systems.

5-74. Contract requirements

When commercial credit card services are solicited, the following requirements apply:

a. Requests for proposals will be sent to three or more sources that offer credit card services. More than one major credit card company will be represented among those sources solicited.

b. The solicitation and resulting contract will state that the NAFI will not perform credit control or collection functions.

c. The contract will be issued by the NAFI. The contracting officer will not sign the contractor's credit card agreement on behalf of the NAFI. This does not prohibit inclusion of mutually agreeable terms, from contractor's agreement, in NAFI contracts.

5-75. Other contract considerations

When writing solicitations for commercial credit card services, several of the points below need to be considered and a decision made as to whether they are applicable to the situation. They are not all-inclusive; there may be others, depending upon local conditions.

a. The offeror's discount rate. This refers to the percentage of the amount charged by the customer that will be deducted as payment for performing the service for the NAFI. For evaluation purposes, the lower the discount rate, the better.

b. Whether the offeror will provide, without charge, imprinters, sales draft forms, and any other materials required.

c. Whether the offeror will train NAFI employees who will be working with the system, and at what (if any) price.

d. Who will be responsible for maintaining the credit card imprinters.

e. The amount of the line of credit the offeror will allow for each card holder.

f. Who will be authorized to use the credit cards.

g. The amount of interest that will be charged to NAFI customers who do not pay their bills within the prescribed amount of time.

h. The procedure to be used when the amount of the sale shown on the sales draft is illegible.

i. Whether a minimum amount will be imposed for a single sale, and if so, how much.

5-76. Evaluation of offers

The evaluation of offers received in response to a credit card solicitation will be based on only those factors shown in the solicitation. The offeror's proposed discount rate will probably be the most important factor. Other possible evaluation factors are the credit line to be provided, the amount of interest to be charged on overdue accounts, and the procedure for processing illegible sales drafts. The evaluation factors will depend on those items considered important by the requesting activity and the contracting officer.

5-77. NAF consignment agreements

a. A NAF consignment agreement (NCA) is an agreement between the NAFI and a vendor (supplier) in which tickets are consigned to the NAFI (the consignee) who will receive the tickets from the vendor and pay for the tickets after they are sold. Title to the tickets remains with the vendor (the consignor) until they are sold by the NAFI. The NAFI assumes responsibility for reasonable care of the tickets until they are sold or returned to the vendor. Consignment agreements will be issued by a duly appointed contracting officer.

b. NCAs will be issued using DA Form 5755-R (Consignment Agreement (Nonappropriated Funds)) and will incorporate all contract clauses or provisions required for or applicable to the agreement. NCAs obligate the NAFI to pay for consigned tickets sold or not returned to the vendor within a specified period of time. The contracting officer will ensure that accurate records are maintained by the vendor and the NAFI activity that acknowledges receipt of and return of consigned tickets by proper completion of a DA Form 5755-1-R (Consignment Control Sheet), which is incorporated in the NCA (DA Form 5755-R). DA Form 5755-R and DA Form 5755-1-R will be locally reproduced on 8½ by 11-inch paper. Copies for local reproduction purposes are located at the back of this issue.

c. All NCAs will include the following:

- (1) Description of all consigned tickets.
- (2) A specific period of time during which the NAFI will assure full responsibility for consigned the tickets and pay the vendor the price agreed to on the CCS for all unreturned tickets.
- (3) A disclaimer statement that the tickets furnished under the NCA is neither approved nor endorsed by any element of the U.S. Government.
- (4) Provisions for cancellation of an event (in the case of consigned tickets to a scheduled event) and/or termination of the NCA, including responsibilities for return of consigned tickets.

Chapter 6 Purchases For Overseas Shipments

6-1. General

a. Movement of goods through the Defense Transportation System (DTS) requires certain documentation procedures not common to routine local delivery purchases. This chapter gives a basic explanation of how to arrange shipments via the DTS. Since the bulk of the shipments will be made by water, air transport is not addressed in detail. SEAVAN (container) service is the preferred method of shipment provided it is the most cost-effective. Whenever possible, contracting activities should order material in SEAVAN load quantities for stuffing by the vendor. This eliminates repacking of cargo at the ocean terminal and can result in substantial savings of time and money.

b. For planning purposes, it is usually cost-effective to stuff containers at the source (vendor location) when the cargo volume exceeds 660 cubic feet. Since SEAVANs are obtained on a per-SEAVAN basis, the shipper and contracting activity should attempt to obtain the best possible use of each SEAVAN. When a single activity's cargo volume is too low to fill a container, cargoes for more than one activity may be consolidated, using stop-off service (multiple delivery points). The appropriate clearance authority (para 6-7) should be contacted to determine the feasibility and availability of this service on a case-by-case basis.

c. Since NAFIs are not authorized the use of appropriated funds for CONUS linehaul/drayage, the cost of moving the container from the vendor stuffing facility to the ocean terminal will have to be funded by the NAFI and arranged by the contracting office. This can be done by including this cost in the purchase of the goods, and the vendor can arrange movement on a commercial bill of lading or on a Government bill of lading. When a Government bill of lading is used, rating and routing assistance can be obtained from the respective clearance authority (see paragraph 6-7). The procedures for obtaining container service are outlined in paragraphs 217004 and 202027.1, AR 55-355.

6-2. Parcel post shipments

a. Shipments that are sent through the U.S. Postal Service to overseas destinations are generally handled by an Army Post Office (APO). Such shipments will be accepted by the U.S. Postal Service only when the following conditions are met:

- (1) The parcel is within the size and weight limits established by the postal authorities. Since these limits differ for

various APOs, none are listed in this regulation. However, a listing may generally be found in the AAFES Resale Catalog.

(2) The proper amount of postage is paid.

(3) Markings of commercial freight companies are removed from parcels delivered to the post office by these carriers.

(4) It is legal to mail the item.

b. Shipments that do not meet these criteria must be transported through the DTS. In order to assure efficient processing of the order by the vendor and to prevent loss or damage of goods in transit, clear instructions and accurate documentation must be provided to the vendor. Actual freight delivery addresses as found in the DOD Activity Address Directory (DODAAD) must be provided. APO addresses are insufficient for these shipments and will not be used.

6-3. Instructions to the vendor

The vendor is responsible for properly filling the order, for putting the exterior markings or labels on the cartons/containers that the goods will be shipped, and for completing the transportation control and movement document (TCMD) and attaching it to the shipment. The contracting activity must provide the vendor with the following:

a. An accurate description of the items to be shipped.

b. A complete billing or payment address.

c. Instructions for properly labeling/marketing all cargo.

6-4. Marking instructions

a. Military Standard Marking for Shipment and Storage 129 (MIL-STD-129) contains detailed instructions for exterior container markings. In general, the following are required for vendor shipments to overseas destinations. Data in (1) through (8) below are provided by the NAFI to the vendor.

(1) Transportation control number (TCN).

(2) Required delivery date (RDD).

(3) Name and address of consignor with its DOD Activity Address Code (DODAAC) taken from the DOD Reg 4000.25D, Part I.

(4) Transportation Priority (TP), discussed in paragraph 6-9.

(5) Name of port of embarkation (POE), followed by the applicable three-digit water port identifier code assigned in DOD Reg 4500.32-R (MILSTAMP), Volume I, Appendix N, Section III.

(6) Name of port of debarkation (POD), followed by the applicable three-digit water port identifier code. The DODAAD (DOD Reg 4000.25D, Part I, TAC 2) identifies the POD in code for each overseas DODAAC. MILSTAMP, Volume I, Appendix B, Section IV, gives the name for each code.

(7) Name and address of consignee with its DODAAC taken from DOD Reg 4000.25D, Part I.

(8) Transportation Account Code (TAC) of the ordering activity taken from DOD Reg 4500.32-R, Volume II.

(9) Piece number and total number of pieces (for example, 1 of 3, 2 of 3, etc.).

(10) Weight of each piece (in pounds).

(11) Cube of each piece (in cubic feet).

b. For shipments that do not require an export traffic release (para 6-6), the POE may be specified on the contract. Port selection information is contained in MILSTAMP, Volume I, Appendix N. However, it is more efficient to request a port call from the appropriate address (shown in para 6-7).

6-5. Transportation control numbers (TCN)

a. A TCN identifies the individual shipment. It is a 17-digit alphanumeric code issued by the contracting office. The basic components are as follows:

Table 6A
Transportation Control Number (TCN)

Digit Position: 1–6

Description DODAAC of the consignee (ordering activity) or of the receiving activity designated to receipt for material shipped to local activities which may not have a unique DODAAC.

Digit Position: 7

Description Last digit of calendar year shown on the order.

Digit Position: 8–10

Description Issue date shown on the order (Julian date).

Digit Position: 11

Description Type of shipment code. Use N.

Digit Position: 12–14

Description Last three digits of the purchase/delivery order or contract number.

Digit Position: 15

Description Code for shipments from two or more plant locations (if one location, insert an X).

Digit Position: 16

Description Partial shipment code (if complete shipment, insert an X).

Digit Position: 17

Description Insert an X.

b. A complete shipment from one plant location will have a TCN that looks like the following:

WX 3JNA 6303 N010 XXX

c. Shipments from more than one plant location will have TCNs that look like the following:

WX 3JNA 6303 N010 AXX First location

WX 3JNA 6303 N010 BXX Second location

WX 3JNA 6303 N010 CXX Third location

Use D through Z for 4th through 25th locations. Do not use the letter “X” when shipment will be made from several locations.

6–6. Export traffic release

An export traffic release is a form of control required for cargo in any of the categories shown below.

a. Cargo in lots of 10,000 pounds or more.

b. Shipments (in any quantity) as follows:

(1) Material classified confidential, secret, or top secret.

(2) Explosives or other hazardous materials (poisonous or radioactive).

(3) All cargo moving to an ammunition outloading port for water shipment.

(4) Shipments requiring exclusive use of motor vehicles.

(5) Shipments of perishable biological material.

(6) Shipments of narcotics and drug abuse items.

(7) Small arms (except privately-owned firearms, shipped in personal property shipments).

c. Shipments occupying full, visible capacity of a railway car or motor vehicle.

d. Less-than-load shipments tendered as a carload or truckload.

e. Vehicles by driveway service.

6–7. Port calls

a. Port calls must be requested in writing. They may be obtained from the Water Terminal Clearance Authority (WTCA) at either of the addresses listed below. A copy of the purchase or delivery order must accompany the letter requesting the port call.

(1) For traffic moving out of an eastern United States or Gulf port the following address is used:

Commander

Military Traffic Management Command, Eastern Area

ATTN: MTE-ITEL

Bayonne, NJ 07002

(AUTOVON 247–6386)

- (2) For traffic moving out of a western United States port the following address is used:

Commander
Military Traffic Management Command, Western Area
International Traffic, Export Control Division
ATTN: MTW-ITX
Oakland Army Base
Oakland, CA 94626
(AUTOVON 864-3185)

b. The port call request should be submitted to the WTCA three weeks prior to the date the cargo will be available for shipment. The following must be contained in the request:

- (1) A copy of the purchase or delivery order and all modifications.
- (2) A brief description of the cargo. Include any special handling requirements.
- (4) The total number of cartons.
- (5) The total weight of the shipment.
- (6) The total cube of the shipment.
- (7) The transportation control number (TCN).
- (8) The transportation account code (TAC).
- (9) The port of debarkation (POD).
- (10) The contractor's preferred port of embarkation (POE).
- (11) Point of contact, including telephone number.
- (12) Date cargo will be available for shipment.
- (13) Number and size of containers required.

6-8. Transportation priority

NAF shipments are normally assigned a transportation priority of three (TP-3), and are moved by surface. The installation commander, however, may authorize priority of two (TP-2) and air movement for—

- a. Seasonal items that have been delayed due to late availability from CONUS vendors.
- b. High-value items, or items that require special method-of-shipment considerations for control purposes.
- c. Critical or emergency situations requiring stock replacement of health items and equipment or facility failures that threaten the operational capabilities of the NAFI.

6-9. DD Form 1384 (Transportation Control and Movement Document)

a. *General.* Its primary purpose is to provide the data needed to manage the shipment throughout the DTS. The contractor is responsible for obtaining it from the contracting office, completing it, and forwarding it to the WTCA in advance of the shipment. More efficient, however, is for the ordering activity to obtain the form, partially complete it, and forward it to the contractor for final completion. In so doing, the contracting officer will furnish the contractor written notice similar to what is shown below:

- (1) Military documentation for the ocean transportation of this order is required. The contractor will fill in the blocks below on the attached TCMD and attach it to the shipment.

Block 8	Mode of shipment to port (1 digit), if other than motor freight
Block 9	Type pack (2 digits)
Block 15	Day shipped (Julian date)
Block 22	Pieces (write over EEEE)
Block 23	Actual weight (lbs.)—write over estimated weight
Block 24	Actual cube (cubic feet)—write over estimated cube

(2) Mode of shipment codes to be used in block 8 are shown below:

Table 6B
Mode of shipment codes

Code	Description
B	Motor, less than truckload
C	Van unpacked, uncrated personal or government property
D	Driveaway, truckaway, towaway
E	Bus
G	Surface parcel post
I	Government truck, including common service, except as qualifying for local delivery
L	Rail, less than carload
M	Freight forwarder
V	SEAVAN
W	Water, river, lake, coastal (commercial)
Z	MSC controlled contract or arranged space
2	Government water craft, barge, lighter
5	United Parcel Service
9	Local delivery, including deliveries between air or water terminals and adjacent activities within CONUS. The local delivery area is defined in tariffs governing local application of carrier service as filed with regulatory authorities.

b. Data elements. The ordering activity should mail one copy of the TCMD to the appropriate WTCA in advance of the shipment; otherwise, the shipment may be delayed at the port pending receipt of the TCMD. Much of the information on the TCMD is needed by the contractor to properly prepare markings/labels. The installation transportation officer (ITO) is tasked to provide assistance in preparing transportation documentation. Container serial number, seal number, and date of shipment to port are required for container shipments stuffed by the vendor. The contractor completes the TCMD by adding pieces (block 22), actual weight (block 23), actual cube (block 24), mode of shipment to port (block 8), and type pack code (block 9).

(1) Types of pack codes for breakbulk shipments are shown below:

Table 6C
Pack codes for breakbulk shipments

Code	Description
BD	Bundle
BA	Bale
BG	Bag, burlap or cloth
BL	Barrel
BS	Basket
BX	Box
CA	Cabinet
CB	Carboy
CC	HHG containers, wood (federal specification PPP-B-580)
CL	Coil
CN	Can
CO	Container other than CU, CW, or X
CR	Crate
CS	Case
CT	Carton
CU	Container, Navy cargo transporter
CW	Container, commercial highway lift
CY	Cylinder
DB	Dufflebag
DR	Drum
EC	Engine container

Table 6C
Pack codes for breakbulk shipments—Continued

Code	Description
ED	Engine cradle or dolly
FK	Footlocker
HA	Hamper
KE	Keg
LS	Loose, not packaged
MW	Multi-wall container (formerly referred to as triple wall or tri-wall secured or attached to a warehouse pallet)
MX	Mixed (more than one type of shipping container)
PC	Piece
PL	Pail
PT	Palletized unit load, other than code MW
RL	Reel
RO	Roll
RORO	Roll on/roll off
SA	Sack, paper
SB	Skid, box
SD	Skid
SH	Sheet
SL	Spool
SW	Suitcase
TB	Tub
TK	Trunk
TU	Tube
UX	Unitized (use code RT for unitized cargo on RORO)
VE	Vehicle
VO	Vehicle in operating condition
VS	SEAVAN-TOTE
WR	Wrapped

(2) A completed TCMD and instructions for its completion are shown at Figure 6-1.

c. Special instructions.

(1) If the cube is not specified on the purchase order, and cannot be estimated using any other available source (e.g., old purchase orders), it can be estimated as follows:

- (a) Dense cargo (beverages, etc.)—multiply weight by .03.
- (b) Other cargo—multiply weight by .12.
- (c) Round off to nearest whole number, except round up to one.

(2) Each “Remarks” line (blocks 43 and 44) requires a TX9 entry (block 32).

6-10. Insurance

a. Neither the Military Traffic Management Command (MTMC) nor the Department of the Army insures cargo moving through the DTS. Therefore, it is the responsibility of the NAFI to obtain marine insurance or to self-insure. This determination will be made by the NAFI fund manager. Dock-to-dock insurance may be purchased through the Army’s Risk and Insurance Management Program (RIMP), by contacting HQDA (DACF-RMI), ALEX, VA 22331-0508 (AUTOVON 221-9480).

b. The insurance premium will vary depending on the type of items covered and the amount of the deductible selected. The insurance may be purchased on a per-shipment basis, with billing made to the NAFI in the month following the request for coverage. When coverage is obtained, a copy of each purchase or delivery order must be forwarded to DACF-RMI in advance of the shipment date.

6-11. Acceptance of goods

When cargo is accepted into the DTS, the Government takes custody of the shipment and relieves the contractor of the responsibility for its safety. However, final acceptance of the goods is not made until the receiving activity has inspected the shipment for conformance to contract requirements. It is at this point that the NAFI takes title. If the point of acceptance is different from the point of delivery, this should be stated in the contract.

6-12. Transportation discrepancies

a. If a shipment is suspected to be lost, the NAFI should contact the contractor to begin a tracer action. The

contractor is responsible for determining whether the shipment has been accepted into the DTS. If the shipment is lost prior to acceptance into the DTS, any additional expenses to re-ship are the responsibility of the contractor or carrier. To trace a shipment effectively, transportation personnel at the port must have a TCN or Government bill of lading number. If it is necessary to contact MTMC directly for tracer action, the proper message form format is contained in DOD Reg 4500.32-R, Volume I. Tracer actions are normally completed within 30 days after receipt of a tracer request.

b. If the shipment is lost within the DTS, recovery costs may be assessed in either of two ways. If the error was made by the DTS (e.g., the cargo was loaded onto a ship destined for a port other than that cited on the container), the additional transportation costs to re-route the shipment are absorbed by the DTS. If the NAFI was in error (e.g., an incorrect address or POD code was assigned and the shipment arrived at the location designated by the code), additional transportation costs to reroute the shipment are charged to the NAFI.

c. All discrepancies in shipments attributed to movement by ocean carrier are reportable through the Discrepancy in Shipment Cargo Outturn System (DISCORS), as prescribed in AR 55-38. Discrepancies in shipments due to movement through transshipment activities (including container consolidation points), as well as container stuffing activities at Military Ocean Terminals, are also subject to chapters 1, 2, and/or 3 of AR 55-38.

6-13. Foreign purchases by overseas NAFIs

Buying supplies and services, including construction from foreign sources in support of overseas NAFIs is governed and will be made in accordance with DOD Directive 7060.3 (app D).

Chapter 7 Contract Management

Section I General

7-1. The administration function

Contract administration covers actions taken after contract award. Its purpose is to ensure that the deliveries of the supplies are correct, complete, and timely, and that the services are performed properly in accordance with contract terms and conditions.

7-2. Designation of contracting officer's representative (COR)

a. CORs are primarily liaisons between the contractor and the contracting officer. CORs have no authority other than that which has been delegated to them by the contracting officer. It is preferred that there be only one COR for a contract. However, the number and expertise of CORs should be enough to efficiently monitor contractor performance. A sample of a COR appointment is shown at figure 7-1.

b. A contracting officer may appoint any Government or NAFI employee, military or civilian, as a COR on a designated contract. In selecting the COR, the contracting officer will ensure that the individual selected possesses the qualifications and experience necessary to perform the function.

c. A COR appointment will be made in writing and designated by name and title of position. When it is necessary to change the terms of the appointment, it will be done by amendment to the appointment or by the issuance of a new appointment. If a COR is to act on behalf of the contracting officer on more than one contract, there will be a separate appointment for each contract. A COR appointment will remain in effect for the term of the contract, unless sooner revoked by the contracting officer. Revocations must also be in writing. Each appointment will state that the COR may not relegate his or her authority. Each appointment will also contain the authority and restrictions applicable to the COR.

d. The original and two copies of the COR appointment will be furnished to the COR, who will be instructed to sign the original and one copy and return them to the contracting officer. The contracting officer will retain the original in the contract file and give one copy to the contractor.

e. A COR may not award a contract or agree to or issue a change to a contract, if the change involves the unit price, total contract price, quantity, quality, or delivery schedule. A contracting officer may authorize a COR to make minor changes, not involving the above items, and to resolve problems as long as such authorizations are not prohibited by the contract. A COR will not be authorized to initiate any purchase actions (e.g., delivery orders against existing contracts) that are related to any contract that the COR is appointed to.

f. The contracting officer will inform the COR as to the nature and extent of any records to be maintained by the COR. When a contract is completed, the COR will turn over all records to the contracting officer. If a COR appointment is revoked during the term of the contract, the contracting officer will instruct the COR as to whether to provide the records to the successor COR or to provide them to the contracting officer.

7-3. Option clauses

a. Use of the option. An option clause will be employed to afford the NAFI the flexibility of purchasing additional supplies or services or to extend the period of the contract, if the action is taken within the period of time specified by the option clause. The contracting officer may include an option clause in a contract when it is determined to be in the best interests of the NAFI. Option clauses will not be used when—

(1) The supplies or services are readily available on the open market (except that the contracting officer may use options for extending the term of indefinite quantity or requirements contracts).

(2) The contractor will incur undue risk, such as the inability to estimate the price or availability of required materials and labor for future requirements.

(3) Market prices for supplies or services are likely to change substantially.

(4) The option represents known requirements for which funds are available, unless the basic quantity is a testing quantity, and unless competition for the optional amount will be impractical after the initial contract award.

b. Service contracts. If there is an anticipated need to continue similar service beyond the first contract period, option clauses may be included in service contracts to assure continued operation and to avoid possible increased costs that might result from interrupted support.

c. (Rescinded.)

d. Contract requirements. When the contracting officer elects to use an option clause in a contract, the following apply:

(1) The contract will specify applicable limits on the quantity of additional supplies or services that may be purchased.

(2) The contract will specify the overall duration of the contract including any extensions. The total for the basic and option periods for both supply and service contracts, however, may not exceed 5 years.

(3) The contract will state the period within which the option may be exercised, and the specified period will be sufficient to allow the contractor enough lead time to ensure continuous production.

e. Defining the option. Options for increased quantities of supplies or services may be expressed in terms of a percentage of specific line items, an increase in the quantity of specific line items, or additional numbered line items. Extension of the term of the contract may be expressed as an amended completion date or as an additional time period for performance in terms of days, weeks, or months.

f. Exercising the option.

(1) The contracting officer will provide written notice to the contractor within the time period specified in the contract when exercising an option. When the contract contains an economic price adjustment clause and the contractor requests such an adjustment, the contracting officer will determine the effect of the adjustment prior to exercising the option. Options may only be exercised after the contracting officer has determined that funds are available, that the requirement covered by the option fulfills an existing need, and that the exercise of the option is the most advantageous method of satisfying the need.

(2) After considering price and other factors, the contracting officer will make the determination to exercise the option on the basis of one of the following:

(a) A new solicitation fails to produce a better price or a more advantageous offer.

(b) An informal analysis of current market prices reveals that the option price is still the best price.

(3) Prior to exercising an option, the contracting officer shall determine that it can be done in accordance with the terms of the option clause and the requirements of this paragraph. This determination will be made in writing and included in the contract file.

(4) The contract modification or other written document that notifies the contractor of the exercise of the option will cite the option clause as authority.

g. Option clauses.

(1) The following clause will be included in all solicitations and contracts for increased quantity when the quantity is expressed as a percentage of the basic contract quantity or as an additional quantity of a specific line item:

“OPTION FOR INCREASED QUANTITY.

The NAFI may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule. Delivery of the added items will continue at the same rate as the like items called for under the contract, unless parties otherwise agree.”

(2) The clause below will be included in all solicitations and contracts for services when it is necessary to include in the contract a requirement that the NAFI will give the contractor a preliminary written notice of its intent to extend the contract. A stipulation that an extension of the contract includes an extension of the option and/or a specified limitation on the total duration of the contract.

“OPTION TO EXTEND THE TERM OF THE CONTRACT—SERVICES

(a) The NAFI may extend the term of this contract by written notice to the Contractor within the time specified in

the Schedule, provided, that the NAFI shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the NAFI to an extension.

(b) If the NAFI exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.”

7-4. Modifications

a. Modifications may only be issued by contracting officers acting within the limits of their authority. All modifications will be in writing and issued on DA Form 4073-R. No modifications may be issued that involve an increase in the contract price without a certification of available funds.

b. Below are two types of contract modifications.

(1) *Unilateral*. Unilateral modifications, signed only by the contracting officer, are used to—

(a) Make administrative changes.

(b) Issue change orders.

(c) Make changes authorized by clauses other than a changes clause (e.g., Options clause, Suspension of Work clause).

(d) Issue termination notices.

(2) *Bilateral*. Bilateral modifications (supplemental agreements) are signed by both the contracting officer and the contractor, and are used to—

(a) Make negotiated equitable adjustments as a result of the issuance of a change order.

(b) Definitize letter contracts.

(c) Reflect other agreements of the parties that change the terms of the contract.

c. There are limitations in the use of bilateral modifications (supplemental agreements). Supplemental agreements may not be used to expand an existing contract to include additional work of any considerable magnitude, such as the example set forth in paragraph 7-6, unless it clearly appears that the additional work was not contemplated at the time of the original contract and is such an inseparable part of the work originally contracted for, as to render it reasonably impossible of performance by other than the original contractor.

7-5. Change orders

a. The Changes clause of the contract permits the contracting officer to make unilateral changes in those areas identified in the clause. The contractor must continue performance of the contract as changed, except in a cost-reimbursement contract containing a clause establishing a limitation of costs. The Changes clause provides for an equitable adjustment if the change causes an increase or decrease in the cost of the work or in the time required for performance. If the change order does not contain a price for the change, a supplemental agreement will be prepared reflecting the resulting equitable adjustment in the contract terms. If an equitable adjustment in the contract price or delivery terms, or both, can be agreed upon in advance, only a supplemental agreement need be issued.

b. Contracting officers will negotiate equitable adjustments resulting from change orders as promptly as possible (less than 30 days after issuance of the order is preferred). The adjustment will be based on both the NAFI-estimated cost of the change and the contractor's estimated cost presented in his or her proposal for adjustment. If additional funds are required as a result of the change, the contracting officer will obtain a certification of available funds before making any change to the contract.

c. In order to avoid possible controversies that could arise as a result of a negotiated equitable adjustment following a change order, the contracting officer will ensure that all portions of the equitable adjustment have been presented to the contractor, that they are understood, and that both parties are in agreement with them. In addition, the contracting officer should include a statement similar to the following in the supplemental agreement:

“Contractor's Statement of Release

In consideration of the modification(s) agreed to herein as complete equitable adjustments for the changes required under the NAFI change order issued on (insert date), the contractor hereby releases the NAFI from any and all liability under this contract for additional equitable adjustments resulting from said changes and attributable to facts or circumstances giving rise to the contractor's proposal for adjustment dated (insert date) on which this adjustment is based.”

7-6. Constructive changes

Constructive changes are defined as any conduct by a contracting officer or other authorized representative, other than a formal change order or supplemental agreement, which has the effect of requiring the contractor to perform new work or different work from that required by the contract. Such changes entitle the contractor to relief under the Changes clause. Constructive changes can be the result of several occurrences—the NAFI requires the contractor to meet a delivery date despite an excusable delay; the NAFI furnishes defective specifications; the NAFI misinterprets

the contract; the NAFI requires a more thorough inspection than prescribed in the contract. When an equitable adjustment is required as a result of a constructive change, the procedures in paragraph 7-5 will be followed.

7-7. Double shipments

Written confirmations of oral orders must state that they are confirming orders. If they are not so designated, the possibility of a double shipment is greatly increased, and the NAFI can be held responsible for payment of both shipments. If a double shipment arrives due to contractor error, however, the NAFI is not responsible for payment of the second shipment, transportation charges to return the goods to the company, storage charges imposed by the carrier, or restocking charges. Some companies have a policy of not accepting returned goods unless they have authorized the return in writing. The contractor should, therefore, be contacted prior to the return of unordered goods to determine if such a policy exists and to coordinate the return with the contractor.

7-8. Partial shipments

Unless partial shipments are authorized in the contract, they do not have to be accepted. If partial shipments are not going to be accepted, however, the contractor should be advised of this before any shipments are made. If partial shipments are authorized or accepted, receiving personnel must forward a receiving report (such as DD Form 250) to the accounting office, noting the shipment as partial, in order that a partial payment may be made. Unless the original contract contained a provision for acceptance of a full shipment only, acceptance of a partial shipment does not require modification of the contract. Partial shipments, however, should not be confused with partial deliveries that often occur when the contractor ships all of the goods in several packages at the same time and delivered separately later. In such a situation, the contractor should not be held responsible, and the receipt of the goods should not be treated as a partial shipment.

7-9. Delays in delivery or performance

a. Excusable delays are due to causes beyond the control of the contractor. The standard procedure is to extend the delivery schedule by a bilateral modification (supplemental agreement) to the contract. If the goods are needed before the contractor can deliver, the contract may be terminated for convenience.

b. Inexcusable delays are not due to causes beyond the control of the contractor. Several courses of action are available. A thorough analysis of the situation and possible courses of action should be made to determine the most efficient and economical method of resolution. If the delivery schedule can be extended, this can be done by a supplemental agreement to the contract which both extends the delivery schedule and provides for a reduction in the price of the supplies or services. If there is not sufficient time to extend the delivery schedule, a termination for default can be invoked with excess repurchase costs charged to the defaulted contractor. It is recommended that legal advice be obtained for any situation involving an inexcusable delay.

7-10. Discharge of NAF obligations

All NAF obligations will be processed in a timely manner as called for by PL 97-177, as amended by PL 100-108, the Prompt Payment Act. To this end, all NAF contracting personnel will become familiar with the Prompt Payment Act and relevant implementing instructions. Failure to timely discharge NAF contract obligations will result in the requirement to pay interest. Failure to pay interest on NAF contract obligation on time, moreover, may result in the accrual of additional penalties. Each installation commander or designee will, therefore, establish safeguards to ensure payment of each NAF contract. Safeguards shall include, at a minimum, the following:

a. Ensuring that sufficient funds are available to cover an obligation prior to the award of a contract, except as provided in *b* below.

b. Ensuring that advance of cash on delivery (COD) payments are restricted to those situations authorized by this regulation (see paras 4-18 and 4-18.1).

c. Ensuring that contract payment is made by overseas activities when a contractor furnishes the NAFI with an invoice, a certificate of conformance of goods, and proof of delivery to a U.S. port. Such payment does not constitute advance payment and shall not be delayed pending receipt of the shipment at the overseas destinations.

d. Ensuring that nonappropriated funds are committed only by those individuals who have the authority to do so.

Section II

Contract Disputes, and Appeals

7-11. Contract disputes and appeals

a. This paragraph prescribes procedures for processing disputes and appeals arising out of all NAFI contracts and purchase orders, except AAFES.

b. Contract disputes may arise over the respective rights and obligations of the parties. It is the duty of the contracting officer to make every reasonable attempt, consistent with the provisions of the contract, and good business practice, to settle and dispute amicably without resort to the procedures provided in the "Disputes" clause. The

contracting officer will convene whatever meetings or conferences are necessary and negotiate in good faith concerning the merits of the dispute and the respective contentions of the parties with respect thereto.

7-12. Requirement for a final decision

a. When all attempts to amicably settle a dispute fail, the contracting officer must make a decision under the "Disputes " clause. The contracting officer will first request the contractor to set out his version of the dispute in writing. The contracting officer will review all available facts pertinent to the dispute. The contracting officer will obtain technical and professional advice, such as that offered by engineers, auditors, and judge advocates, but the decision must be the product of his personal and independent consideration and evaluation.

b. The contracting officer's decision must be in writing. It will include a statement of facts sufficient to enable the contractor to understand both the decision and the basis therefore. Normally, the decision will be in the form of a statement of the claim or other description of the nature of the dispute, with necessary references to pertinent contract provisions; a statement of the relevant facts to which the parties agree and, as clearly as possible, the area of disagreement; and the contracting officer's statement of his or her decision and the basis therefore.

c. The contracting officer's decision will contain the following paragraph:
"This is a final decision of the contracting officer which may be appealed in accordance with the "Disputes " clause of the contract. If you decide to make such an appeal, written notice of the appeal (in triplicate) must be mailed or otherwise furnished to the contracting officer within ninety days from the date you receive this decision. Such notice should indicate that an appeal is intended, and should cite this decision and identify the contract. If a notice of appeal is filed, it will be forwarded to the Armed Services Board of Contract Appeals (ASBCA), and the Recorder of the Board will docket the appeal and will forward to you a copy of the Rules of Procedure of the Board. "

d. The contracting officer's decision will be mailed to the contractor by certified mail, return receipt requested.

7-13. Notice of appeal

When the contracting officer receives a notice of appeal, he will endorse thereon the date of mailing or the date of receipt, if otherwise conveyed. The contracting officer will forward the notice of appeal, together with an envelope showing the postmark, directly to: Recorder, Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, 7th Floor, Falls Church, Virginia 22041. No comment concerning the appeal will be made on the covering letter. A copy of the notice of appeal and letter of transmittal to the ASBCA will be forwarded to JALS-CA (see para 7-14 below for address).

7-14. Preparation of the appeal file (ASBCA Rule 4)

a. Within 30 days of receiving of the notice of appeal, the contracting officer, with the advice and assistance of the SJA, or legal counsel, will compile the appeal file in five total copies. One copy will be forwarded directly to: Recorder, Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, 7th Floor, Falls Church, Virginia 22041; two copies will be forwarded through command channels to: Chief Trial Attorney Department of the Army, JALS-CA, (Room 437), 5611 Columbia Pike, Falls Church, VA 22041-5013; one copy will be forwarded to the contractor (this copy need not contain the items listed in *b* (2) below which the contractor already has); and one copy will be retained by the contracting officer.

b. The appeal file will include the following:

(1) The finding of fact and the decision from which the appeal is taken, and the letter(s) or other documents of claim in response to which the decision was issued.

(2) The contract and pertinent plans, specifications, amendments, and change orders.

(3) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal.

(4) Any additional information considered material.

c. Since the appeal file will be available to the contractor, no privileged information or documents and no analysis of the merits of the appeal or the law applicable thereto will be included.

7-15. The comprehensive report

a. Within 30 days of his receipt of the notice of appeal, the contracting officer, with the advice and assistance of his judge advocate or legal counsel, will compile a comprehensive report of the matter in dispute. The objective of the report is to bring to the chief trial attorney's attention all facts affecting the dispute.

b. The comprehensive report will be forwarded through command channels to the chief trial attorney. It will *not* be furnished to the ASBCA or to the contractor.

c. The comprehensive report will include—

(1) A factual summary of events leading to the dispute.

(2) The names and addresses of all potential witnesses, including those of the contractor (if known), having information concerning the facts in dispute.

(3) A signed statement by each Government witness reflecting the facts to which the contracting officer will be able

to testify (or a summary thereof if it is impossible to obtain the signed statement), and a statement as to the expected availability of each Government witness at the hearing.

(4) An analysis of the contractor's position and a discussion of the validity thereof.

(5) A memorandum by the staff judge advocate or legal advisor of the contracting officer, setting forth an analysis of the legal issues involved in the dispute and comments upon the adequacy of the findings of fact and the legal sufficiency of the decision.

7-16. Representation

The chief trial attorney will represent all DA NAFIs in appeals taken by contractors from decisions of NAFI contracting officers. The contracting officer and the attorneys assigned to his office are authorized to communicate directly, by telephone or otherwise, with any person or organization to secure any witnesses, documents, or information they consider necessary in connection with such representation.

7-17. Witness expense

Travel and per diem costs of witnesses in connection with the appeal and necessary preparation therefor will be borne by the NAFI in whose name the contract was issued.

7-18. Action by major commander

With the advice and assistance of the Staff Judge Advocate or legal counsel, the major commander should—

- a.* Carefully review the appeal file and the comprehensive report.
- b.* Ensure that the findings on which the decision is based adequately meet the issues involved, and that the decision is consistent with the findings, and is proper in form and substance.
- c.* Ensure that the appeal file and comprehensive report are completed and that the evidence contained therein supports the decision of the contracting officer.
- d.* Advise the contracting officer either to furnish additional support for any decision from which a timely appeal has been taken, or to withdraw it when it is clear from the contract provisions or the applicable law that the decision is not sufficiently supported by available and competent evidence, or is erroneous.
- e.* Not more than 10 days after taking the action prescribed in *d* above, notify the Chief Trial Attorney of the nature of the action taken, and of an estimated date as to when either additional support will be furnished or the decision will be withdrawn.
- f.* Not more than 10 days after receiving the comprehensive report, forward it and the appeal file, to the Chief Trial Attorney, with—
 - (1) Evaluations, conclusions, and recommendations that he deems appropriate, and
 - (2) Any additional evidence considered essential to enable the Chief Trial Attorney to properly protect the interests of the NAFI before the ASBCA.
- g.* Ensure that assistance is rendered to the Chief Trial Attorney in obtaining additional evidence or in making other necessary preparations for presenting the NAFIs position before the Board.

7-19. Copies furnished

When the ASBCA renders an opinion, copies of the opinion will be sent by certified mail to the attorneys for the contracting officer and the contractor. A motion for reconsideration of the decision, may be filed with the ASBCA within 30 days of the receipt of the opinion unless the total contract amount is less than \$10,000 and/or the appellant has previously waived the right to appeal.

7-20. Appeals

An ASBCA decision cannot be appealed to the General Accounting Office (GAO), the U.S. Claims Court or any other federal court since these agencies do not have jurisdiction over NAFI contracts.

Section III

Contract Claims

7-21. Claims

a. Contract claims arising out of the operations of joint civilian employee NAFIs on Army installations within the United States and Panama will be paid from civilian nonappropriated funds, as directed by the Board of Directors, Army and Air Force Civilian Welfare Fund (AAFECWF).

b. Contract claims arising out of the operations of Army NAFIs, other than AAFES and civilian NAFIs, will be paid from the Category IIIA Command Morale Support Fund (MSF) NAFI of the major command exercising jurisdiction over the NAFI concerned. The Category IIIA MACOM NAFI will be reimbursed by the NAFI concerned. The Army Morale, Welfare and Recreation Fund will not assume responsibility for payment of contract claims, except those

acquired as the successor-in-interest to residual assets and liabilities of dissolved NAFIs, or in the event of financial inability of a MACOM MSF NAFI to pay such a claim.

7-21.1. OCONUS claims

a. When an agency of the United States, authorized to pay a foreign country which settles claims pursuant to treaty or agreement with the United States, receives a statement containing amounts which reflect claims payable from NAFIs, the applicable MACOM will assure payment to that agency from the appropriate NAFI sources cited above.

b. In overseas areas where existing treaties or agreements require an agency of the United States to carry insurance, the commander of the applicable MACOM will assure proper coverage and claims settlement under the provisions of chapter 13 of AR 215-1.

Section IV

Contract Terminations

7-22. Terminations

a. Contracts may be terminated in whole or in part for the convenience of the NAFI or because of default of the contractor. A partial termination stops only that portion of the work that has not begun at the time of termination. Work that is still in progress is referred to as the continued portion. Work that has been completed and accepted before the effective date of the termination is called the completed portion. A complete termination stops the entire contract. All termination actions require legal review prior to initiation.

b. When a termination action is considered, its effect on related purchases, the estimated cost of the termination, and the availability of funds to effect any necessary repurchase must be evaluated. When a termination for convenience is determined to be the best course of action, it should be processed quickly. It is desirable to eliminate the possibility of a contractor expediting performance in order to increase costs allocable to the terminated portion of the contract.

c. Generally, a contractor is notified of a termination by telegram followed by a confirming letter, but a letter alone may be used. In either case, the letter must contain the following information: the effective date of the termination, the amount of work terminated, and the work stopped if termination is partial. Other applicable information may be incorporated into the letter.

7-23. Contractual authority

The authority to terminate fixed-price supply and service contracts is contained in the Termination for Default and Termination for Convenience contract clauses. In construction contracts, the authority is contained in the Default-Fixed-Price Construction and Termination for Convenience clauses.

7-24. Terminations for convenience

a. Terminations for convenience are normally used when the NAFI no longer has a need for the supplies or services under contract. The termination for convenience clause includes a provision for an equitable adjustment to the contractor for work already performed. This does not, however, entitle a subcontractor to a direct claim against the NAFI when the contract with the prime contractor is terminated.

a.1. In the event a contract must be terminated for the convenience of the NAFI, the contracting officer will attempt to terminate the contract on a no-cost basis to either party. If this is not possible, the contractor will be required to submit a claim to the contracting officer in writing. A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portion of the contract, if any, including a reasonable allowance for profit. Fair compensation under an equitable adjustment is a matter of judgment and cannot be measured exactly. In any given case, a variety of methods to reach an equitable adjustment may be appropriate in arriving at a fair compensation (e.g., cost and price analysis). The use of business judgment and appropriate legal advice will be used by the contracting officer in negotiating an equitable adjustment. If an equitable adjustment cannot be negotiated, the contracting officer will make a final decision concerning the claim, in writing, and provide this to the contractor in a timely manner. Any dispute arising as a result of this process will be resolved using the Disputes process (see para 7-11).

b. For concession contracts *only*, the contracting officer has the option of using the following “no-fault termination” clause in lieu of the standard Termination for Convenience clause: “This contract may be terminated in whole or in part by either party upon thirty (30) days notice in writing to the other party.”

7-25. Terminations for default

Terminations for default are generally used when a contractor fails to perform. Such failure includes failure to deliver at the required time, failure to make necessary progress in performance, and failure to perform any other provisions of the contract. Prior to terminating a contractor for default, the contracting officer must issue a cure notice or show-cause notice to the contractor. A cure notice is used when it has been determined that the amount of time remaining (a minimum of ten days) in the contract period will be adequate to effect a cure to the non-performance. If the time remaining in the contract period is not adequate to effect a cure, a show-cause notice shall be issued to the contractor.

It is not always necessary, however, to issue a cure notice or show-cause notice to a contractor prior to termination of certain contracts for default. A supply contract, for example, may be terminated for failure to deliver. When a fixed-price supply or service contract is terminated for default, the contractor may be liable for excess repurchase costs only if a replacement contract is issued within a reasonable period of time after the notice of default is issued. In construction contracts terminated for default, the uncompleted structure and responsibility for its completion or disposition may be taken over by the NAFI. If an equitable adjustment cannot be agreed upon, the issue may be regarded as a question of fact under the Disputes clause.

7-26. Cure notices

Cure notices will be written essentially as shown below.

“You are notified that the nonappropriated fund considers your (specify contractor’s failure[s]) a condition that is endangering performance of the contract in accordance with its terms. Therefore, unless such condition is cured within ten (10) days (or longer, if the contracting officer deems it reasonably necessary) after receipt hereof, the NAFI may terminate subject contract for default under contract clause number (insert the number of the Termination for Default clause).”

7-27. Show-cause notices

Show-cause notices will be written essentially as shown below. “Since you have failed to (perform contract number...within the time required by the terms thereof) (cure the conditions endangering performance under contract number...as described to you in my letter of [date]), I am considering terminating said contract pursuant to contract clause number...(Default). Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose out of causes beyond your control and without fault or negligence on your part. Accordingly, you are hereby afforded the opportunity to present, in writing, any facts bearing on this question to the Commander, (insert complete address, including office symbol, of the activity where the contracting officer is located), with a copy thereof to the undersigned for information within ten (10) days after receipt of this notice. Your failure to present any reason within this time may be considered as an admission that none exists. Your attention is invited to the respective rights of the contractor and the NAFI under contract clause number...(Default), and the liabilities that may be invoked in the event a decision is made to terminate for default of the contractor. Any assistance rendered to you on this contract or acceptance by the NAFI of delinquent goods or services hereunder will be solely for the purpose of mitigating damages and is not to be construed as an intention on the part of the NAFI to condone any delinquency or as a waiver of any rights the NAFI may have under subject contract.”

7-28. Liquidated damages

a. Clauses concerning the assessment of liquidated damages may only be used when the following two conditions are met:

(1) The time of delivery or performance is critical and the NAFI may reasonably expect to suffer damage if delivery or performance is late.

(2) The extent or amount of expected damage can not be determined and documented.

b. The minimum amount of liquidated damages should be based on the estimated cost of inspection and superintendence for each day of delay in completion. If the NAFI will suffer other specific losses due to the failure of the contractor to complete the work on time, an amount for these items should also be included. If liquidated damages are set without consideration of probable actual damages, they may be considered to be a penalty and, consequently, unenforceable.

c. When determining whether to use a liquidated damages clause, the contracting officer will consider its likely effect on pricing, competition, and contract administration. If the decision is made to use a liquidated damages clause, the applicable clause and appropriate rate of damages will be included in the solicitation. The contract may include a maximum total dollar amount or a period of time, or both, during which liquidated damages may be assessed in order to prevent the assessment of unreasonable damages.

7-29. Suspension of work and stop-work orders

a. During contract performance, a situation may arise that requires the NAFI to suspend work or to order a work stoppage. A suspension of work for a reasonable period of time may be directed by the contracting officer. If the suspension is unreasonable, the contractor may submit a written claim for any increases in costs (excluding profit) incurred as a result of the suspension.

b. Stop-work orders may be used for such reasons as state-of-the-art advancements, engineering breakthroughs, and realignment of programs. The issuance of a stop-work order will be approved at a level higher than that of the contracting officer. Stop-work orders may not be used instead of a termination notice after a decision to terminate has been made.

c. Stop-work orders will include the following elements:

(1) A description of the work to be stopped.

(2) Instruction concerning the contractor’s ordering of additional supplies or services.

- (3) Instructions to the contractor concerning any action to be taken on subcontracts.
- (4) Suggestions to the contractor concerning minimizing costs, since the NAFI may be required to pay the contractor an equitable adjustment.
- d. Shortly after a stop-work order has been issued, the contracting officer will discuss it with the contractor and make any modifications to it that are revealed to be necessary as a result of the discussion.
- e. As soon as possible after a stop-work order has been issued (and before it expires), the contracting officer will take one of the following actions:
 - (1) Terminate the contract.
 - (2) Cancel the stop-work order (subject to approval by the ADCFA).
 - (3) Extend the period of the stop-work order, if it is necessary and if the contractor agrees. Such an extension will be accomplished by the use of a supplemental agreement.
- f. Contracting officers may insert a suspension or stop-work order clause that includes information substantially the same as stated above, if determined to be in the best interest of the NAFI.

Section V

Contract Files

7-30. General

This section prescribes requirements for the content, distribution, and close-out of contract files.

7-31. Content of small purchase files

- a. The contracting office will maintain records of all contractual actions and contract files. The contract file (i.e., purchase orders, delivery orders and all other contracts) will consist of, as a minimum, the following:
 - (1) DA Form 4065-R, sole source justification (if applicable) and any additional paperwork from the requesting activity.
 - (2) Record of negotiation listing vendors contacted and their quoted prices, delivery time, and any other information offered which served as a basis for the determination of the most favorable offer.
 - (3) The RFP or RFQ, if applicable.
 - (4) Legal review, if applicable.
 - (5) The signed original purchase order, delivery order, or contract.
 - (6) Any correspondence relating to the purchase.
 - (7) Copies of receiving reports.
 - (8) Evidence of final payment.
- b. In the case where several purchase or delivery orders result from a single purchase request, the orders may be filed numerically in the same folder.

7-32. Distribution of small purchase contracts

- a. The following represents the minimum distribution for small purchase contracts:
 - (1) The signed original remains in the contract file in the contracting office.
 - (2) One copy will be provided to the contractor.
 - (3) One copy will be provided to the accounting office.
 - (4) One copy will be provided to the receiving activity.
- b. Additional copies may be necessary depending on local requirements.

7-33. Close-out of small purchase files

Small purchase files are considered to be closed when the contracting officer receives copies of the receiving reports and evidence of final payment.

7-34. Content of files for other than small purchases

- a. The examples below are of records normally kept in contract files. The list is not all-inclusive, and not all items listed will be applicable to every file.
 - (1) The purchase request, acquisition planning information, and other presolicitation documents.
 - (2) Evidence of availability of funds.
 - (3) Synopsis of the acquisition as it appeared in the Commerce Business Daily or, if the actual synopsis is unavailable, a copy of the synopsis sent to the Commerce Business Daily for publication.
 - (4) A list of sources solicited, including additional firms that requested a copy of the solicitation and were furnished it, additional firms that requested a copy of the solicitation and were denied it (including the reasons for the denial), approval and justification for limiting the number of sources solicited.
 - (5) NAFI estimate of the contract price.

- (6) A copy of the solicitation (including attachments).
- (7) A copy of each offer or quotation received.
- (8) The abstract of offers or record of negotiations.
- (9) Preaward survey reports.
- (10) Evaluation plan and evaluation of offers.
- (11) Contracting officer's determination of contractor responsibility.
- (12) Cost or pricing data and analysis.
- (13) Packaging and transportation data.
- (14) Justification for the use of other than a fixed-price contract, and CFSC approval of same.
- (15) Justification for the use of sealed bidding.
- (16) Legal review.
- (17) Notice of award.
- (18) The original of the signed contract and all contract modifications.
- (19) Copies of letters to unsuccessful offerors and records of any debriefings with them.
- (20) Bonds and notices to sureties.
- (21) Notices to proceed or to stop work.
- (22) Royalty clearances, copyright reports, etc.
- (23) Contract completion documents.
- (24) Documentation concerning termination actions.
- (25) Cross-reference to pertinent documents that are filed elsewhere.
- (26) Letters of appointment of CORs and ordering officers.
- (27) Copies of any reports required as a result of the dollar value of the contract.
- (28) Any additional documents on which action was taken by the contracting officer.
- (29) A completed copy of the DA Form 5921-R, (Record of Significant Events), for all contract actions in excess of \$25,000 will be included in the contract file. DA Form 5921-R will be locally reproduced on 8½ by 11-in paper. A copy for reproduction purposes is located at the back of this issue.

b. Because of the volume of documents that may be required in the contract file, it may be necessary to divide the documents into preaward and post-award categories and to establish one or more files for each category.

7-35. Distribution of contracts for other than small purchases

- a.* Contracts will not be distributed and information concerning the award will not be divulged until the contract has been properly signed by all parties, and any required approvals have been obtained.
- b.* When a contract is ready for distribution, it will be distributed, as a minimum, as shown below.
 - (1) The original signed document will be retained in the contracting office.
 - (2) One copy will be provided to the contractor.
 - (3) One copy will be provided to the accounting office.
 - (4) One copy will be provided to the requesting activity.
 - (5) One copy will be provided to the COR.

7-36. Close-out of contracts for other than small purchases

- a.* Time standards for closing out files are generally as follows:
 - (1) All firm fixed-price contracts for other than small purchases and construction should be closed within six months after the month in which the contracting officer receives evidence of completion.
 - (2) Files for contracts involving construction in excess of small purchase limits may be held open for one year following completion or until the one-year warranty inspection results are satisfactory. The total amount of time, however, before final payment is made should not exceed 20 months after completion.
- b.* Contract files will not be closed if a contract is in litigation or under appeal or if a termination is involved and the termination actions are not complete.
- c.* Contracts are generally considered to be closed when—
 - (1) The contractor has completed the required deliveries and the supplies have been inspected and accepted by the NAFI.
 - (2) The contractor has performed all the services and they have been accepted by the NAFI.
 - (3) All option provisions, if any, have expired.
 - (4) The contracting officer has evidence of final payment.

SUBJECT: Appointment of Ordering Officer (DA Form 4066-R)

To: (Address to individual by name, indicating rank or grade, section or location, and activity or installation.)

1. Appointment. Under AR 215-4, Chapter 1, you are appointed an Ordering Officer for the purpose set forth in paragraph 2 herein. Your appointment shall become effective (enter date) and shall remain effective, unless sooner revoked, or until you are reassigned or your employment is terminated. You are responsible to and under the technical supervision of the Appointing Authority for your actions as an Ordering Officer.

2. Authority, Limitations and Requirements. Your appointment is subject to the use of the method(s) of purchase and to the limitations and requirements stated below:

a. Subject to your ensuring that funds are available, you may make purchases using DA Form 4066-R (Purchase Record-Invoice-Voucher)(Nonappropriated Funds) provided all of the following conditions are satisfied:

(1) The aggregate amount of the purchase transaction is not in excess of \$1,000. You may not split purchases to avoid this monetary limitation.

(2) Supplies or nonpersonal services are immediately available; and

(3) One delivery and one payment shall be made;

(4) The supplies or services purchased do not require technical inspection;

(5) Its use is determined to be more economical and efficient than use of other small purchase methods.

b. You are responsible for redistribution of DA Form 4066-R in accordance with instructions on the reverse of the form.

c. You may not redelegate your authority under this appointment to any other person.

3. Standards of Conduct and Procurement Reporting Requirements.

a. You shall comply with the Standards of Conduct prescribed in AR 600-50, Standard of Conduct for Department of Army Personnel, and shall review the regulation at least semi-annually.

b. You shall furnish the Contracting Officer to whom you are responsible, such information as he/she may require for procurement reporting purposes in the manner and at the time specified by the contracting officer.

4. Termination of Appointment

a. Your appointment may be revoked by written notice at any time by the undersigned authority or his/her successor.

b. Should you be reassigned from your present position or should your employment be terminated while this appointment is in effect, you shall promptly notify the appointing authority in writing so that your appointment may be terminated.

Receipt acknowledged

Type Name and Title of Appointing Authority

Signature Date

Figure 1-1. Sample Letter of Appointment (DA Form 4066-R)

SUBJECT: Appointment of Ordering Officer (CONTRACTS)

To: (Address to individual by name, indicating rank or grade, section or location, and activity or installation.)

1. Appointment. Under AR 215–4, Chapter 1, you are appointed an Ordering Officer for the purpose set forth in paragraph 2 herein. Your appointment shall become effective (enter date) and shall remain effective, unless sooner revoked, until expiration of the contract(s) enumerated in paragraph 2 herein, or until you are reassigned or your employment is terminated. You are responsible to and under the technical supervision of the Appointing Authority for your actions as an Ordering Officer.

2. Authority, Limitations, and Requirements. Your appointment is subject to the use of the method(s) of purchase and to the limitations and requirements stated below.

a. Subject to your ensuring that funds are available, you may place delivery orders (DA FORM 4067–R) the aggregate amount of the order not in excess of (insert dollar amount) against the following indefinite delivery contract(s), copies of which are attached. (List contract(s) by number and name of Contractor.)

b. You are responsible for (i) distributing and administering delivery orders that you place, (ii) establishing controls necessary to ensure that all contract terms and conditions are met and that supplies or nonpersonal services ordered conform to contract requirements before acceptance is made or payment authorized, and (iii) reporting deficiencies in contractor performance promptly to the contracting officer who awarded the contract against which the delivery order was placed. You may not make any changes in the terms or conditions of any contract against which you place delivery orders.

c. You may not redelegate your authority under this appointment to any other person.

(3) Standards of Conduct and Procurement Reporting Requirements.

a. You shall comply with the Standards of Conduct prescribed in AR 600–50, Standards of Conduct for Department of the Army Personnel, and shall review the regulation at least semi-annually.

b. You shall furnish the Contracting Officer to whom you are responsible such information as he/she may require for procurement reporting purposes in the manner and at the time specified by the Contracting Officer.

4. Termination of Appointment.

a. Your appointment may be revoked by written notice at any time by the undersigned authority or his/her successor. No written termination of your appointment shall be made upon expiration of contracts enumerated in paragraph 2 herein, unless such contracts are terminated prior to the expiration dates established therein.

b. Should you be assigned from your present position or should your employment be terminated while this appointment is in effect, you shall promptly notify the Appointing Authority in writing so that your appointment may be terminated.

Receipt acknowledged

Type Name and Title of Appointing Authority

Signature Date

Figure 1-2. Sample Letter of Appointment (DA Form 4067-R)

SUBJECT: Termination of Appointment as Ordering Officer

To: (Address same as letter of appointment)

Your appointment as Ordering Officer made by letter of appointment issued (enter date) is terminated effective (enter date) without prejudice to any action taken pursuant thereto.

Receipt acknowledged

Type Name and Title of Appointing Authority

Signature Date

Figure 1-3. Sample Letter of Termination of Appointment



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY COMMUNITY AND FAMILY SUPPORT CENTER
ALEXANDRIA, VA 22331-05

(1)

CERTIFICATE OF APPOINTMENT

Pursuant to authority vested in the undersigned, and in accordance with AR 215-4,

BARBARA BARNES

is hereby appointed

CONTRACTING OFFICER

for nonappropriated fund procurements conducted
under the cognizance of

COMMANDER

U. S. ARMY COMMUNITY AND FAMILY SUPPORT CENTER

(2)

subject to the limitations in cited regulations and to a limited dollar authority of \$ _____ to enter into contractual actions on behalf of nonappropriated fund instrumentalities.

(3)

Unless sooner revoked, this appointment is effective as long as the appointee named herein is assigned to the _____.

(4)

ROBERT M. JOYCE
Major General, USA
Commanding

(5)

Date

Serial #

(6)

- (1) Use official installation letterhead stationary
- (2) Insert "the Installation Commander, Fort _____"
- (3) Insert the dollar amount authorized by the Installation Commander
- (4) Insert the name of the purchasing office and the installation
- (5) Insert the Installation Commander's or designee's signature block
- (6) Use installation control number system

Figure 1-4. Sample Contracting Officer's Warrant

PAGE NUMBER

3

EDITION OF OCT 88 IS OBSOLETE

(9) Enter the award information. This block is reserved for any remarks or information that may pertain to the solicitation and/or the award number. (Examples: Action cancelled, amendments issued, award number, etc.).

AR 215-4 • 10 September 1990

M	TAB	TAB	TAB	TAB	TAB	TAB	TAB
ARMY NAF PURCHASE REQUEST <small>For use of this form, see AR 215-4; the proponent agency is DCSPER</small>				1. NAFI ADDRESS Fort Benjamin Franklin Officers' Club Bldg. 1776 Fort Benjamin Franklin, PA 20005-0005 Commercial: (456) 543-1234 TELEPHONE NUMBER AUTOVON: 221-0840		2. REQUEST NO FOC-87-0005 3. DATE 23 February 1987	
4. ITEMS BEING REQUESTED							
ITEM NO. <i>a</i>	DESCRIPTION OF ITEM/SERVICE <i>b</i>	QUANTITY <i>c</i>	UNIT <i>d</i>	EST UNIT PRICE <i>e</i>	ESTIMATED AMOUNT <i>f</i>		
0001.	OVEN with Range (4 burner top) Electrical Specs: 208/220 Volts single phase, 60 cycle. Exterior Dimensions: 38" width, 33" depth, 29" height (includes 6" legs). Finish: Stainless Steel (S/S)- interior and exterior. NSF approved. Wiring Requirements: Unit must be wired for direct hook-up (5-6 foot lead wires), U.L. listed. Warranty: Standard one (1) year Parts and Labor. <u>SUGGESTED MODEL: P-1776-1976E</u> <u>SUGGESTED SOURCE:</u> Patriot Mfg. Co., Inc. 1812 Overture Dr. Springfield, MA 11122 TEL: (800) 555-1212	1	ea	\$4,500.00	\$4,500.00		
				ESTIMATED FREIGHT.....		\$400.00	
				ESTIMATED TOTAL.....		\$4,900.00	
5. REQUESTED DELIVERY DATE 28 May 1987		6. DELIVER TO FF-NAF Warehouse, Bldg. 1789 Fort B. Franklin, PA 20005-0005		7. <input type="checkbox"/> SOLE SOURCE JUSTIFICATION ATTACHED DELIVERY HOURS: 0730 to 1600 hrs DELIVERY DAYS: Tuesday - Friday			
8. REQUESTOR'S SIGNATURE AND PRINTED NAME <i>John S. Smith</i> John S. Smith, Manager Fort Franklin Officers' Club		9. NAFI FUND MANAGER'S SIGNATURE AND PRINTED NAME <i>William T. Timothy, Jr.</i> William T. Timothy, Jr. ADCFA, MWR Custodian					
10. FUNDS ARE AVAILABLE IN THE AMOUNT OF: \$ 4,900.00		11. ACCOUNTING DATA 87-1-3-34-94S CPMC# 87-0002-0C					
12. TYPE/TITLE OF CERTIFYING OFFICIAL Phyllis E. Pearsons Chief, Financial Mgmt Div.		SIGNATURE <i>Phyllis E. Pearsons</i>				DATE: 23 Feb 87	
13. REMARKS Size and electrical specifications are vital characteristics that any "or equal" unit must meet to be responsive to this requirement. Point of contact to refer inquiries: Ms. Anne M. Allison, tel (456) 543-1234							
APPROVAL/DISAPPROVAL AND DATE (if applicable)							
14. INSTALLATION COMMANDER'S SIGNATURE AND PRINTED NAME						DATE:	

DA FORM 4065-R, FEB 87

EDITION OF SEP 86 IS OBSOLETE

Figure 3-1. Sample of a completed DA Form 4065-R-Army NAF Purchase Request



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY COMMUNITY AND FAMILY SUPPORT CENTER
ALEXANDRIA, VA



MEMORANDUM: Installation Vendor Contact Policy Letter

SUBJECT: Vendor Contact Policy Letter

SEE DISTRIBUTION

1. This letter establishes policy on vendor contacts during the conduct of daily business in NAF/MWR at Ft. Swampy, VA. It applies to all civilian and military personnel. The authority for this policy is contained in AR 600-50, Chapter 2 - Conflicts of Interest and General Prohibitions. This is a permanent policy which will be reviewed annually.

2. Policy. All contacts with vendors will be conducted in accordance with the authority cited above and following principles:

a. Unauthorized Release of Acquisition Information. Personnel are prohibited from releasing to any individual or business representative any knowledge such persons may possess or have acquired in any way concerning proposed acquisitions. Such information can only be released in accordance with existing authorized procedures, by authorized contracting personnel, who will release such information to all potential contractors as nearly simultaneously as possible, so that one potential contractor may not be given an advantage over another.

b. Unauthorized Statements or Commitments with Respect to Award of Contracts. Only contracting officers and their duly authorized representatives acting within their authority are authorized to make commitments with respect to award of contracts. Unauthorized personnel are prohibited from making any commitment or promise relating to award of contracts and will make not representation that would be construed as such a commitment. Personnel will never advise a business representative that an attempt will be to influence another person or agency to give preferential treatment to his or her concern in the award of future contracts. Persons requesting preferential treatment will be informed by official letter that contracts are awarded only in accordance with established contracting procedures.

Figure 3-2. Vendor Contact Policy Letter

SUBJECT: Vendor Contact Policy Letter

3. Procedures.

a. All personnel (except as outlined in paragraph b. below) seeking information, technical assistance, or vendor information will request the assistance of NAF Contracting.

b. Personnel regularly involved in discussions with vendors are made aware that no one is authorized to commit NAFIs with respect to award of contracts and that any information exchanged is not to be construed as a commitment to purchase. Personnel shall not engage in negotiations with vendors or potential contractors. The Chief, NAF Contracting shall:

(1) Establish a register to record company representative names, company names, time, date, and nature of visits, commodities/services the company carries, telephone number, person visited and other appropriate comments. This register will be kept on file for reference for inspections and audits at all times. Registers will be maintained for one year and will be retired or destroyed in accordance with office administrative procedures.

(2) Ensure that contacts with vendors are kept to the minimum amount needed in order to obtain sufficient data to proceed with developing the requirement. Vendors may be requested to provide basic catalogs, samples, and pricing information and if necessary provide information on price or availability of items/services. Under no circumstances may anyone reveal the existence of a definite requirement or any budgetary information.

4. Visits to Vendor's Facilities.

a. Visits to contractor facilities are prohibited unless accompanied by contracting personnel or a duly authorized representative, or unless authorization is obtained from the Chief, NAF Contracting.

b. Attendance at public trade shows is authorized, however, guidance in this Policy Letter will be followed when conducting discussions with trade show contractors.

Figure 3-2. Vendor Contact Policy Letter —Continued

SUBJECT: Vendor Contact Policy Letter

5. Handling and Processing of Unsolicited Proposals. Procedures for handling unsolicited proposals will be in accordance with AR 215-4, paragraph 4-42. Any personnel, military or civilian, who receives an unsolicited proposal from a prospective contractor, will forward the proposal to NAF Contracting for processing.

6. Vendor Demonstration of Products or Services. Any requirements for demonstrations of vendor products or services within NAF/MWR activities or specifically for NAF/MWR activities, will be requested through and coordinated with NAF Contracting.

FOR THE COMMANDER:

SIGNATURE BLOCK

XXX, XX

XXXXXXXXXXXXX, XXXXXXXXXXXXX

DISTRIBUTION:

Figure 3-2. Vendor Contact Policy Letter —Continued



DEPARTMENT OF THE ARMY
U.S. ARMY COMMUNITY AND FAMILY SUPPORT CENTER
ALEXANDRIA, VA



REPLY TO
ATTENTION OF

MEMORANDUM FOR (Insert applicable office symbol/activity individual's name)

SUBJECT: Authorization to Visit Vendor

1. In accordance with (insert Installation Name) Vendor Contact Policy Letter dated (insert date of Policy Letter) (Enclosure 1), the following personnel:

John Doe, Activity Manager, Ft. Swampy, VA
Jim Smith, Assistant Activity Manager, Ft. Swampy, VA
Jean Diceson, Activity Specialist, Ft. Swampy, VA

are authorized to visit the following vendor's facility:

Name of Vendor's Facility
Vendor's Street Address
City, State

for the purpose of (state purpose) on or about (insert date of visit).

2. You are required to adhere to the policies outlined in the (Installation Name) Vendor Contact Policy Letter and AR 600-50, Standards of Conduct. In addition, a signed statement containing the following information is to be submitted to the NAF Contracting Office upon your return: date and duration of visit, name(s) and address of contractor and contractor personnel contacted, contract name and number (if applicable), program involved and topics discussed.

Enclosure

Signature Block
Chief, NAF Contracting

Figure 3-3. Authorization to Visit Vendor Letter

PAGE 1 OF 1

ARMY NAF SOLICITATION ABSTRACT FORM			VENDORS					
For use of this form, see AR 215-4; the proponent agency is DCSPER			NAME Patriot Mfg. Co. Springfield, MA	NAME G. W. Kitchen Equip. Mfg. Valley Forge, PA	NAME P. Revere Dist. Co. Rydon, MI	NAME		
1. PURCHASE REQUEST NUMBER POC-87-0004			TELEPHONE NUMBER 1 (800) 554-2002	TELEPHONE NUMBER (702) 432-0065	TELEPHONE NUMBER (800) 728-7468	TELEPHONE NUMBER		
2. REQUESTING ACTIVITY Ft. Franklin Officer's Club			QUOTER Mr. Linda Evans	QUOTER Mr. Tom Sellers	QUOTER Ms. Pat Kildare	QUOTER		
3. BUYER'S NAME (PRINT) J. W. Buyer			DEL. 3-4 weeks DISC. Net/30 FOB	DEL. 3-4 weeks DISC. 2/20 Net/30 FOB	DEL. 6-8 weeks DISC. 1 1/2/15 Net/30 FOB	DEL.		
4. REMARKS Size and electrical specs. are vital characteristics. SPECIAL DELIVERY INSTRUCTIONS: Days and hours available for delivery (See purchase request)			(X) DEST () OTH () GSA (X) NAF APNAP-87-G-00023 () OM () OTHER	(X) DEST (X) OTH V. F. PA (X) GSA GSA-08F-0011A () NAF () OM () OTHER	(X) DEST (X) OTH Wilm., Del. () GSA () NAF (X) OM () OTHER	() DEST () OTH () GSA () NAF () OM () OTHER		
NO.	ITEM/SERVICE	QTY.	PRICE		PRICE		PRICE	
			UNIT	EXT.	UNIT	EXT.	UNIT	EXT.
0001	COOKER, Oven with Range (See purchase request for purchase description and specifications)	1 ea	\$4700.00	\$4700.00	\$3800.00	\$3800.00	\$4400.00	\$4400.00
			Quoted on model		Quoted on model		Quoted on model	
			#P1776/1976-E		#ADSP-09876E		#PHJ356-SF-C-E	
			208/220 volts, 60 cycle, single phase		208/220 volts, 60 cycle, single phase		208/220 volts, 60 cycle, single phase	
			Size: 33"D x 29"H x 38"W		33"D x 29"H x 38"W		34"D x 37"W x 29 1/2"H	
	Estimated Freight Charges (if applicable)				\$465.00		\$450.00	
TOTAL (SUBTOTAL) (ESTIMATED FREIGHT)			\$4700.00		\$4265.00		\$4850.00	

DA FORM 5567-R, OCT 86

Complete Instructions

(1) Enter the purchase request number from block 2 of DA Form 4065-R (provided by requesting activity or assigned by the contracting activity in order to keep track of requests received.)

(2) Self-Explanatory.

(3) Self-Explanatory.

(4) This block is reserved for any special information or remarks needed on the abstract form (example: award basis, such as all or none or multiple award; variation in quantity allowances, special delivery instructions, etc.)

(5) Vendors. Enter the following information:

a. name of company or vendor's business name;

b. telephone number;

c. name of the person quoting;

d. quoted delivery period;

e. quoted prompt payment discounts;

f. quoted delivery terms, FOB destination or FOB other, (when quoted FOB "other", buyer will fill-in the FOB point stated by the quoter and request an estimated price quote on freight costs (estimated freight costs will be recorded in block 8), and;

g. information on whether items being quoted on are under GSA Federal Schedule Contracts, NAF contracts or agreement; or whether quoted items are offered on the open market. When prices quoted are off an existing GSA or NAF contract or agreement the buyer is to request the contract or agreement number and insert number into the space provided. If items are quoted on other than GSA, NAF, or open market, buyer is to insert this source in the space market "other". Examples might be the Federal Prison Industries (FPI), National Industries for the Blind (NIB), and National Industries for the Severely Handicapped (NISH).

(6) a. Enter the line item of each item being requested.

b. Enter the description of item(s) or service(s) being requested from block 4b of the DA FORM 4065-R, Army NAF Purchase Request.

c. Enter the quantity being requested for each line item.

(7) Each price column is separated into 2 subcolumns. In the sub-column entitled "unit", enter the unit price quoted by the vendor for each line item. In the sub-column entitled "EXT.", multiply the unit price of each line quoted and enter that figure as the total amount of that line item.

(8) Enter the sum of all extended price total for each quoting vendor. This figure should include (shown separately) the estimated freight or delivery costs, if any. In the event the DA Form 5567-1-R is used, the buyer should enter the sub-total of all the vendor's quotes shown on that page.

Figure 4-1. How to fill out DA Form 5567-R NAF Solicitation Abstract Form

BLANKET PURCHASE AGREEMENT**CALL RECORD**

BPA _____

PAGE ____ OF ____

VENDOR _____

CALL NO.	ITEM DESCRIPTION (FIRST LINE ITEM ONLY)	TOTAL AMOUNT	DELIVERY DATE	DELIVERY TICKET NO.	CALLER's INITIAL
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					
A-					

TOTAL AMOUNT OF CALLS- _____

I CERTIFY THAT THE CALLS LISTED ABOVE ALONG WITH THE ATTACHED TICKETS ARE CORRECT AND PROPER FOR PAYMENT.

BPA CALLER
(TYPE OR
PRINT)

SIGNATURE

DATE

Figure 4-2. Sample call record

Yes No

- () () 1. Has the correct format been utilized?
- () () 2. Have the following terms and conditions been included:
- () () a. Description of agreement
- () () b. Extent of obligation
- () () c. Pricing
- () () d. Notice of BPA callers and limitations
- () () e. Delivery tickets
- () () f. Invoices
- () () 3. Are orders being placed within the stated scope of the agreement?
- () () 4. Is competition being obtained when necessary?
- () () 5. Is there a continuing need for the requirement?

Additional remarks/recommendations:

Reviewing Official...

Type/printed name

Signature

Rank/Grade and Position

Date

Figure 4-3. BPA Checklist

Completion Instructions

Check the block marked Order for Supplies or Services.

- (1) Delete the word "contract" and enter the purchase order number. (See para 2-1 for information on purchase order numbering system.)
- (2) Write "NA".
- (3) Enter the date the order is placed.
- (4) Enter the purchase request number from block 2 of the DA Form 4065-R.
- (5) Enter the name, address, and telephone number for the office issuing the purchase order. It is also beneficial to enter the name of the person who processed the order as a point of contact for any questions concerning the order.
- (6) Enter the name and address of the office administering the purchase order if it is different from the issuing office. (If the name and address of the office administering the order is the same as block 5, this block may be used to enter accounting data or CPMC codes.)
- (7) Enter the complete name of the company, the complete mailing address, and the name of the person with whom the order was placed or from whom pricing was obtained. It is also beneficial to add the company's telephone number in the event that additional phone calls are needed during the administration of the purchase order.
- (8) Enter the date on which delivery or performance is required. This block does not apply to method of conveyance or transportation.
- (9) Free On Board (FOB) destination is the preferred method for supplies delivered within the Continental United States. FOB other, means "other than destination" and should only be used when it is unavoidable or more cost effective. In this case, it is advisable to have the supplier pay the freight and add the cost to the invoice as a separate item. When this is done, a statement should be included in the schedule (Block 17) or on DA Form 4068-R explaining what procedure is being used. The freight charge provided by the supplier should be shown in the amount column (Block 21) and should also be included in the total cost of the order (Block 22). In the event the supplier can only estimate the freight charge, it should be shown as an estimate and it will cause the purchase order to have an estimated total price.
- (10) Enter any applicable prompt payment discounts. If there are no prompt payment discounts, enter the word "net". Government or military discounts and quantity discounts are to be shown in the Schedule. Prompt payment discounts are to be taken on the cost of goods only and may not be applied to freight or handling charges.
- (11) Enter the name and complete address of the activity which will receive the shipment of supplies or services. Include a telephone number and point of contact if possible, in case contact is required during delivery.
- (12) Enter the complete address and telephone number of the accounting or disbursing office that will issue the payment check.
- (13) If the address where invoices are to be mailed appears elsewhere on this page, insert the address in block # _____. If the address is not shown in any of the blocks of the DA Form 4067-R, provide this information on the DA Form 4068-R.

Figure 4-4. How to fill out DA Form 4067-R Sample Purchase Order

- (14) Check the block marked "Purchase". The blank is provided for an explanation of pricing. Such terms as "published price list", "catalogue", "verbal quote per Mr./Ms. Doe on 15 July 86" are sufficient.
- (15) For bilateral purchase orders, check the line for ACCEPTANCE in Block 14 and enter the number of copies of the purchase order to be returned to the issuing office. The contractor will show his acceptance of the order by signing in block 15b and returning the designated number of copies to the issuing contracting office.
- (16) The item number refers to the line item number for the supplies or services. It does not include shipping charges, discounts, shipping instructions, warranties, etc.
- (17) This section refers to the description of the supplies or services being ordered. All factors listed in paragraph 3-7 apply.
- (18) Enter the quantity of each line item being ordered.
- (19) The unit refers to the packing designation, such as "each", "case ", "bundle", "carload", or "lot".
- (20) Enter the unit price of the item.
- (21) Multiply the unit price of each item by the number of units and enter that figure as the total amount of the line item.
- (22) Enter the total amount of the purchase order. If it is an estimated amount, it should be shown as an estimate. The total is to be entered here as well as on the continuation sheet.
- (23) Will be used by receiving and accounting personnel to show differences in the order total and invoice total.
- (24) When the purchase order is \$25,000 or less, and/or does not exceed the NAFI contracting officer's warrant authority, the NAFI for over \$25,000 or exceeds the NAFI contracting officer's warrant, an appropriated fund contracting officer shall sign and date.
- (25) Through (30) are to be completed by the accounting personnel or receiving personnel. (In the case of a partial shipment, DD Form 250 (Material Inspection and Receiving Report) may be used as a receiving document to expedite partial payment.)

Notes:

1. For Blocks 16 through 21, if more space is needed than is provided, insert "See Schedule, Page 2" and list all line items on the DA Form 4068-R. Two ways to show the unit pricing are contained in hypothetical example in figures 4-4 and 4-6.
2. When the purchase order is complete and DA Form 4074-R have been attached, insert the total number of pages in the block in the upper right hand corner of DA Form 4067-R.

Figure 4-4. How to fill out DA Form 4067-R Sample Purchase Order—Continued

M	TAB	TAB	TAB	TAB	TAB	TAB	TAB
ORDER FOR SUPPLIES OR SERVICES/REQUEST FOR QUOTATIONS (Nonappropriated Funds)							PAGE OF 1 14
For use of this form, see AR 215-4; the proponent agency is DCSPER							
(Check Appropriate Item) <input checked="" type="checkbox"/> Order for Supplies or Services —No appropriated funds of the United States shall become due or be paid the contractor by reason of this delivery/purchase order.		Request for Quotation No. _____ Return _____ copies of this quote by: _____ <small>This is not an order. Supplies are of domestic origin unless otherwise indicated by the quoter. The fund reserves the right to consider quotations or modifications thereof received after the date indicated should such action be in the interest of the fund. This is a request for information and quotations furnished are not offers. When quoting complete blocks 9, 10, 15a, 20, 21, 22. If you are unable to quote, please advise. This request does not commit the fund to pay any cost incurred in preparation of this quotation or to procure or contract for supplies or services.</small>					
1. CONTRACT/PUR ORDER NO. NAFAA1-87-M-0175		2. DELIVERY ORDER NO. n/a		3. DATE 24 February 1987		4. PURCHASE REQUEST NO. FOC-87-0004	
5. ISSUED BY Fort Franklin NAF Contracting Office Bldg. 2461, Rm. 1214 Fort Franklin, PA 20005-0005 TEL: (456)543-3456 POC: Ms. Wilma Miles				6. ADMINISTERED BY (if other than 5) 		MARK ALL PACKAGES AND PAPERS WITH CONTRACT OR ORDER NUMBER	
7. NAME AND ADDRESS OF CONTRACTOR/QUOTER G.W. Kitchen Equipment Co., Inc. 123 Patriot Court Valley Forge, PA 22305-0021 Attn: Mr. T. Sellers, (702)432-0065				8. DELIVER TO DESTINATION BY: 15 April 1987		9. DELIVERY FOB ___ DEST	
				10. DISCOUNT TERMS 2%/20 Days, Net/30 Days		XX OTHER (See Schedule if other)	
11. SHIP TO Fort Franklin - NAF Warehouse Bldg. 1789 Fort Franklin, PA 20005-0005 TEL: (585)290-1108				12. PAYMENT WILL BE MADE BY Central Accounting Office Bldg. 2211, Attn: NAF-CAO Ft. Franklin, PA 20005-0023 TEL: (456)543-5678		13. MAIL INVOICE TO ADDRESS SHOWN IN BLOCK # 12	
14. TYPE OF ORDER ___ DELIVERY—This delivery order is subject to instructions contained on this form only and is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract. XX PURCHASE—Reference your quote <u>(oral) given by Mr. T. Sellers on 13 February 1987</u> furnish the following on terms specified herein. Contract Clauses and Special Requirements, both attached; and delivery as indicated XX If Checked, Contractor shall sign "ACCEPTANCE" in block 15b. and return <u>2</u> copies.							
15a. FOR USE WHEN FORM IS USED FOR REQUEST FOR QUOTATIONS (QUOTER IS TO COMPLETE THIS BLOCK). PRINTED NAME OF QUOTER _____ SIGNATURE _____ DATE _____							
15b. FOR USE WHEN CONTRACTOR'S SIGNATURE IS REQUIRED FOR ACCEPTANCE OF ORDER ACCEPTANCE THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME. NAME OF PERSON AUTHORIZED TO SIGN AND TITLE _____ SIGNATURE _____ DATE _____ Mr. Gregory Washington, Jr. <i>Gregory Washington, Jr.</i> 27 February 87 Executive Vice President							
16. ITEM NO.	17. SCHEDULE OF SUPPLIES/SERVICES			18. QUANTITY ORDERED/ACCEPTED	19. UNIT	20. UNIT PRICE	21. AMOUNT
	SEE SCHEDULE, PAGE 2, Point of contact for this order is: Ms. Wilma Miles Telephone: (456)543-3456						
*If qty accepted by the fund is same as qty ordered, indicate by <input checked="" type="checkbox"/> mark. *If different, enter actual qty accepted below and circle.						22. TOTAL (Estimated) \$4,265.00	
24. PRINTED NAME AND SIGNATURE OF CONTRACTING OFFICER AND DATE <i>Barbara J. Barnes</i> 01 March 1987 Barbara J. Barnes						23. DIFFERENCES	
						25. AMOUNT VERIFIED CORRECT FOR PAYMENT	
26. QUANTITY IN COLUMN 18 HAS BEEN: ___ PARTIAL ___ INSPECTED ___ RECEIVED ___ THE CONTRACT EXCEPT AS NOTED ___ FINAL SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE _____ DATE _____						27. CHECK NUMBER	
30. SIGNATURE AND TITLE OF PAYMENT OFFICIAL _____ DATE _____						28. DATE OF CHECK	
						29. TYPE OF PAYMENT ___ COMPLETE ___ PARTIAL ___ FINAL	

DA FORM 4067-R, FEB 87

EDITION OF SEP 86 IS OBSOLETE

Figure 4-4. Sample of a completed DA Form 4067-R-Purchase Order

CONTINUATION SHEET (Nonappropriated Funds) <small>For use of this form, see AR 215-4; the proponent agency is DCSPER</small>	REF. NO. OF DOC. BEING CONT'D NAFAA1-87-M-0175
NAME OF OFFEROR OR CONTRACTOR G.W. Kitchen Equipment Co., Inc.	PAGE 2 OF 14

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	OVEN with 4 burner range VALLEY FORCE Model # ADSF-09876E Electrical Specs: 208/220 Volts, single phase, 60 cycle. Exterior Dimensions: 38" width, 33" depth 29" height (includes 6" adjustable legs) Finish: Stainless Steel (S/S) interior and exterior (NSF Approved) Wiring Requirements: Unit is to be wired for direct hook-up (6 foot lead wires) Underwriter Laboratories(U.L.) Listed. Warranty: Warranty will be the same commercial warranty available to the contractor's commercial customers and includes on-site coverage for all parts and labor for one (1) year after delivery and acceptance of goods. Warranty will only cover those items specified in the standard commercial warranty in effect at the time of acceptance of this contract. F.O.B. - VALLEY FORCE, PA Ship prepaid and add transportation costs to invoice as a separate item <div style="text-align: right;">ESTIMATED TRANSPORTATION COSTS.....</div> <div style="text-align: right;">ESTIMATED TOTAL.....</div> <div style="text-align: right;">\$465.00</div> <div style="text-align: right;">\$4,265.00</div>	1	ea	\$3,800.00	\$3,800.00
SPECIAL DELIVERY INSTRUCTIONS: Deliveries will only be accepted between the hours of 7:30 AM and 4:00 PM on Tuesdays through Fridays (excluding Federal Holidays) POINT OF CONTACT FOR INFORMATION CONCERNING DELIVERY: <div style="margin-left: 40px;">Mr. Jim Klimert</div> <div style="margin-left: 40px;">TEL: (456)543-8811</div>					

DA FORM 4068-R, MAR 82

EDITION OF MAY 73 IS OBSOLETE

Figure 4-5. Sample Continuation Sheet

How to fill out DA Form 4067-R Sample Delivery Order

Completion Instructions

As a delivery order, DA Form 4067-R will be prepared as follows:

Check the square marked "Order for Supplies or Services".

- (1) Delete the term "Purchase Order Number" and enter the complete number of the contract.
- (2) Enter the delivery order number. (See paragraph 2-1 this AR for information on delivery order numbering system.)
- (3) Enter the date of the order.
- (4) Enter the purchase request number.
- (5) Enter the complete name, address, and telephone number of the office issuing the delivery order. Also, the name of the person who processed the order may be entered as a point of contact for any questions concerning the order.
- (6) Enter the complete name and address of the office administering the delivery order if it is different from the issuing office. (If the name and address of the office administering the order is the same as block 5, this block may be used to enter accounting data or CPMC codes.)
- (7) Enter the complete name, address, telephone number, and point of contact with the company with which the delivery order is being placed.
- (8) Enter the time of delivery as specified in the contract and the date of delivery as estimated by the Contractor, for example, "30 days after receipt of order on or about 27 Sep 81".
- (9) Check the square that reflects the delivery terms of the contract. Its contract delivery terms are other than destination, cite all appropriate information, such as point of origin and estimated freight charges, within the body of the schedule.
- (10) Enter any prompt payment discount terms as specified in the contract. (Example: 3% / 30 days, Net / 21 days, or if there are none, enter the word "net".)
- (11) Enter the complete name and address of the activity which will receive the shipment.
- (12) Enter the complete name, address and telephone number of the accounting or disbursing office that will issue the payment check.
- (13) If the address where invoices are to be mailed appears elsewhere on the page, insert the block # of the address in the space provided. If the address is not shown in any of the blocks of the DA Form 4067-R, provide this information on the DA Form 4068-R.
- (14) Check the block marked "Delivery".
- (15) For bilateral delivery orders, check the line for ACCEPTANCE in block 14 and enter the number of copies of the

Figure 4-6. How to fill out DA Form 4067-R Sample Delivery Order

delivery order that are to be returned to the issuing office. The contractor will accept the order by signing in block 15b and returning the designated number of copies to the contracting office.

(16) As with purchase orders, the item number is the line item number, and does not refer to model or stock number of the item being ordered. Shipping charges, government or quantity discounts, shipping instructions, and warranties do not have line item numbers.

(17) Enter the complete description of the item as given in the contract.

(18) Enter the quantity of each line item being ordered.

(19) Enter the packing designation, such as “each”, “case”, “bundle”, or “carload” ordered.

(20) Enter the unit price of the item.

(21) Multiply the unit price of each item by the number of units and enter that figure as the total amount of the line item.

(22) Enter the total amount of the delivery order. If it is an estimated amount, it should be shown as an estimate.

(23) Will be used by receiving and accounting personnel to show differences between order total and invoice total.

(24) For delivery orders against existing competitively awarded contracts, the NAFI Contracting Officer has unlimited authority to sign orders, unless limited by the contracting officer’s warrant. On noncompetitively awarded contracts, the limitations on the contracting officer will be the same as if awarding a purchase order (see figure 4-4, block 24).

(25) through (30) are to be completed by the accounting personnel and receiving personnel. (In the case of a partial shipment, DD Form 250 may be used as a receiving document to expedite partial payment).

Notes:

1. For blocks 16 through 21, if more space is needed than is provided insert “See Schedule, Page 2 ” and list all line items on the DA Form 4068-R.
2. When the delivery order is complete, insert the total number of pages in the block in the upper right hand corner of DA Form 4067-R.

Figure 4-6. How to fill out DA Form 4067-R Sample Delivery Order—Continued

M	TAB	TAB	TAB	TAB	TAB	TAB	TAB
ORDER FOR SUPPLIES OR SERVICES/REQUEST FOR QUOTATIONS (Nonappropriated Funds)							PAGE 1 OF 2
For use of this form, see AR 215-4; the proponent agency is DCSPER							
(Check Appropriate Item) <input checked="" type="checkbox"/> Order for Supplies or Services —No appropriated funds of the United States shall become due or be paid the contractor by reason of this delivery/purchase order.		Request for Quotation No. _____ Return _____ copies of this quote by: _____ <small>This is not an order. Supplies are of domestic origin unless otherwise indicated by the quoter. The fund reserves the right to consider quotations or modifications thereof received after the date indicated should such action be in the interest of the fund. This is a request for information and quotations furnished are not offers. When quoting complete blocks 9, 10, 15a, 20, 21, 22. If you are unable to quote, please advise. This request does not commit the fund to pay any cost incurred in preparation of this quotation or to procure or contract for supplies or services.</small>					
1. CONTRACT/PUR ORDER NO. GSA-OSF-0011A		2. DELIVERY ORDER NO. NAFAA1-87-F-0125		3. DATE 24 February 1987		4. PURCHASE REQUEST NO. FOC-87-0004	
5. ISSUED BY Fort Franklin NAF Contracting Office Bldg. 2461, Rm. 1214 Fort Franklin, PA 20005-0005 TEL: (456) 543-3456 POC: Ms. Wilma Miles				6. ADMINISTERED BY (If other than 5) 		MARK ALL PACKAGES AND PAPERS WITH CONTRACT OR ORDER NUMBER 	
7. NAME AND ADDRESS OF CONTRACTOR/QUOTER G.W. Kitchen Equipment Co., Inc. 123 Patriot Court Valley Forge, PA 22305-0021 Attn: Mr. T. Sellers, (702) 432-0065				8. DELIVER TO DESTINATION BY: 15 April 1987		9. DELIVERY FOB ___ DEST <input checked="" type="checkbox"/> OTHER (See Schedule if other)	
				10. DISCOUNT TERMS 2%/20 Days, Net/30 Days			
11. SHIP TO Fort Franklin - NAF Warehouse Bldg. 1789 Fort Franklin, PA 20005-0005 TEL: (585) 290-1108				12. PAYMENT WILL BE MADE BY Central Accounting Office Bldg. 2211, Attn: NAF-CAO Fort Franklin, PA 20005-0023 TEL: (456) 543-5678		13. MAIL INVOICE TO ADDRESS SHOWN IN BLOCK #12	
14. TYPE OF ORDER <input checked="" type="checkbox"/> DELIVERY —This delivery order is subject to instructions contained on this form only and is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract. PURCHASE—Reference your quote furnish the following on terms specified herein. Contract Clauses and Special Requirements, both attached; and delivery as indicated. <input checked="" type="checkbox"/> If Checked, Contractor shall sign "ACCEPTANCE" in block 15b. and return - 2 - copies.							
15a. FOR USE WHEN FORM IS USED FOR REQUEST FOR QUOTATIONS (QUOTER IS TO COMPLETE THIS BLOCK). PRINTED NAME OF QUOTER _____ SIGNATURE _____ DATE _____							
15b. FOR USE WHEN CONTRACTOR'S SIGNATURE IS REQUIRED FOR ACCEPTANCE OF ORDER ACCEPTANCE THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED. SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME. NAME OF PERSON AUTHORIZED TO SIGN AND TITLE _____ SIGNATURE _____ DATE _____ Mr. Gregory Washington, Sr. <i>Gregory Washington, Sr.</i> 27 February 1987 President.							
16. ITEM NO.	17. SCHEDULE OF SUPPLIES/SERVICES	18. QUANTITY ORDERED / ACCEPTED	19. UNIT	20. UNIT PRICE	21. AMOUNT		
	SEE SCHEDULE, PAGE 2 Point of contact for this order is: Ms. Wilma Miles Telephone: (456) 543-3456						
*If qty accepted by the fund is same as qty ordered, indicate by <input checked="" type="checkbox"/> mark. *If different, enter actual qty accepted below and circle.				22. TOTAL (Estimated) \$4,265.00			
24. PRINTED NAME AND SIGNATURE OF CONTRACTING OFFICER AND DATE <i>Barbara J. Barnes</i> 02 March 1987 Barbara J. Barnes				23. DIFFERENCES 25. AMOUNT VERIFIED CORRECT FOR PAYMENT			
26. QUANTITY IN COLUMN 18 HAS BEEN: ___ ACCEPTED AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED ___ FINAL ___ INSPECTED ___ RECEIVED SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE _____ DATE _____				27. CHECK NUMBER _____		29. TYPE OF PAYMENT ___ COMPLETE ___ PARTIAL ___ FINAL	
				28. DATE OF CHECK _____			
30. SIGNATURE AND TITLE OF PAYMENT OFFICIAL _____				DATE _____			

DA FORM 4067-R, FEB 87

EDITION OF SEP 86 IS OBSOLETE

Figure 4-6. Sample of a completed DA Form 4067-Delivery Order

M	TAB	TAB	TAB	TAB	TAB	TAB	TAB
CONTINUATION SHEET (Nonappropriated Funds)		REF. NO OF DOC BEING CONT'D		PAGE		OF	
For use of this form, see AR 215-4; the proponent agency is DCSPER		NAFAA1-87-F-0175		2		2	
NAME OF OFFEROR OR CONTRACTOR							
G.W. Kitchen Equipment Co., Inc.							
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT		
0001	OVEN with 4 burner range VALLEY FORCE Model # ADSF-09876E Electrical Specs: 208/220 Volts, single phase, 60 cycle. Exterior Dimensions: 38" width, 33" depth, 29" height (includes 6" adjustable legs) Finish: Stainless Steel (S/S) interior and exterior (NSF Approved) Wiring Requirements: Unit is to be wired for direct hook-up (6 foot lead wires) Underwriter Laboratories(U.L.) Listed. Warranty: Warranty will be the same commercial warranty available to the contractor's commercial customers and includes on-site coverage for all parts and labor for one (1) year after delivery and acceptance of goods. Warranty will only cover those items specified in the standard commercial warranty in effect at the time of acceptance of this contract. F.O.B. - VALLEY FORCE, PA Ship prepaid and add transportation costs to invoice as a separate item ESTIMATED TRANSPORTATION COSTS..... \$465.00 //////////LAST ITEM////////// ESTIMATED TOTAL..... \$4,265.00 SPECIAL DELIVERY INSTRUCTIONS: Deliveries will only be accepted between the hours of 7:30 AM and 4:00 PM on Tuesdays through Fridays (excluding Federal Holidays) POINT OF CONTACT FOR INFORMATION CONCERNING DELIVERY: <div style="margin-left: 100px;"> Mr. Jim Klimert TEL: (456)543-8811 </div>	1	ea	\$3,800.00	\$3,800.00		

DA FORM 4068-R, MAR 82

EDITION OF MAY 73 IS OBSOLETE

Figure 4-7. Sample of Continuation Sheet

I. Inspections:

(These publications are free.)

A. *Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement* lists establishments that have been inspected and sanitarily approved by DOD. In CONUS, a copy may be requested from HQ, U.S. Army health Services Command, Fort Sam Houston, TX 78234; and in OCONUS areas from the major overseas command.

B. *Approved List, Sanitary Inspected Fish Establishments* may be ordered from:

U.S. Department of Commerce

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

National Seafood Quality and Inspection Laboratory

P.O. Drawer 1207

Pascagoula, Mississippi 39567

C. *Interstate Certified Shellfish Shippers List* may be ordered from:

Chief, Shellfish Sanitation Branch (HFF-344)

Food and Drug Administration

200 C Street, SW

Washington, DC 20204

D. *Meat and Poultry Inspection Directory* may be ordered from:

US Department of Agriculture

Food Safety and Quality Service

Meat and Poultry Inspection Program

Washington, DC 20250

II. Prices and General Information

(There is a charge for these publications.)

A. *The National Provisioner, known as the "Yellow Sheet"*, is published daily and contains prices of beef, veal, lamb, and pork in the Omaha and Chicago markets. It may be ordered from National Provisioner, Inc., 15 West Huron Street, Chicago, IL 60610.

B. *The Hotel and Restaurant Institution Meat Price Report*, known as the "Green Sheet", is published weekly as a

Figure 5-1. Information Sources

guide to current meat prices being paid to wholesalers and surveyors by restaurants. It may be ordered from the National Provisioner, Inc., at the address above.

C. *The Meat Buyers Guide* contains descriptive information about meat specifications and portion cuts. It may be obtained from the National Association of Meat Purveyors, 8365-B Greensboro Drive, McLean, VA 22102.

D. *The Fishery Market News Report* contains information on prices, market conditions, production, imports, and exports. It may be obtained from the US Department of Commerce, National Marine Fisheries Service, Statistics and Market News Division, at any of the following addresses:

Room 10, Commonwealth Pier

Boston, MA 02210

201 Varick Street, Room 951

New York, NY 10014

546 Carondelet Street, Room 412

New Orleans, LA 70130

US Customs House, Room 2016

300 South Ferry Street

Terminal Island, CA 90731

1700 Westlake Avenue North,

Room 732

Seattle, WA 98019

III. Market News

Market News reports for livestock, poultry, and egg markets are published daily and are available from regional offices of the United States Department of Agriculture, Agriculture Marketing Service.

Wholesale Fruit and Vegetable Reports

Wholesale fruit and vegetable reports are published daily and are available from individual State Departments of Agriculture.

Figure 5-1. Information Sources—Continued

Figure 6-1. How to fill out DD Form 1384, TCMD

Completion Instructions

Nonappropriated Fund Vendor Shipments

TCMD Documentation prepared by overseas NAF

Instructions and Reference List for Nonhazardous Water Shipments

DD Form 1384 Block	Data Element	Data Source or MILSTAMP Reference
1	Always "TX1"	
2	Blank	
3	Consignor (code)	Shipping Activity, DODAAC
4	Commodity & Special Handling Code	Section III, App. B
5	Blank	
6	POE (Code and in-the-clear)	App N, Sect III
7	POD (Code and in-the-clear)	DOD Reg 4000.25D, Part I (DODAAC) TAC 2
8	Insert "B"	
9	Type of Pack per Contract (Blank if not known)	Sect XVII, App B
10	TCN (Transportation Control No.)	App K-5
11	Consignee (code)	DODAAC of ultimate consignee
12	Transportation Priority (usually 3)	App L, para 4b
13	RDD (Blank if TP3)	Purchase order
14	Blank	
15	Contract Completion Date (Julian date)	Purchase order
16	Always "Z"	
17	TAC (Transportation Account Code)	MILSTAMP Vol II; or Sup 3
22	Insert EEEE	
23	Estimated Weight (in lbs)	Purchase order
24	Estimated Cube (in Cu ft)	Purchase order
32 line 1	Insert "TX9"	
43 line 1	Brief description of cargo	
32 line 2	Insert "TX9"	
43 line 2	Name of vendor, zip code	
32 line 3	Insert "TX9"	
43 line 3	In-the-clear name of consignee	

Figure 6-1. How to fill out DD Form 1384, TCMD



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY COMMUNITY AND FAMILY SUPPORT CENTER
ALEXANDRIA, VA 22331-05

DACF-USA

1 Set 86

SUBJECT: Appointment as Contracting Officer's Representative
(COR) for Contract Number DANAF-86-C-0112

Mrs. Robin J. Hamilton
Chief, Technical Support Branch
US Army Community and Family
Support Center
Alexandria, Virginia 22331-0000

1. Appointment. Effective this date, you are hereby appointed as Contracting Officer's Representative (COR) for the purposes set forth below. Your appointment shall remain in effect throughout the term of the contract unless sooner revoked by the Contracting Officer or until you are reassigned or your employment is terminated.
2. Responsibilities. As COR for this contract, you are responsible for the following:
 - a. Representing the Contracting Officer in the technical phase of the work;
 - b. Ensuring that the Contractor performs in accordance with the terms and conditions of the contract; and;
 - c. Recommending to the Contracting Officer any corrective action deemed necessary in the event of Contractor nonconformance to the terms and conditions of the contract.
3. Limitations. As COR for this contract, you are not empowered to issue, authorize, or agree to any change or modification relating to any of the terms or conditions of this contract. Your authority as COR for this contract may not be redelegated.
4. Standards of Conduct. You will comply with the standards of conduct prescribed by AR 600-50, Standards of Conduct for Department of the Army Personnel.
5. Authority. Your appointment as COP is made under the authority of AR 215-4, paragraph 7-2.
6. Acknowledgement. The original and two copies of your COR appointment are furnished. You are to acknowledge receipt on the original and one copy and return same to the Contracting Officer for retention and distribution to the Contractor.

Barbara Barnes
Contracting Officer

Receipt Acknowledged

Robin J. Hamilton

Chief, Technical Support Branch

Signature

Date

Figure 7-1. COR Appointment Letter

Appendix A References

Section I Required Publications

AR 215-1

The Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in paras 1-5, 1-12, 1-21, 1-23, 1-25, 2-1, 2-9, 5-6, 5-13, 5-16, 5-19, 5-23, 5-25, 5-57, 6-11.)

AR 215-2

The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in paras 1-13, 5-30, 5-33, 5-36, 5-41.)

AR 215-3

Nonappropriated Funds and Related Activities Personnel Policies and Procedures. (Cited in paras 3-20, 4-3, 5-7, 5-13, 5-30.)

AR 215-5

Nonappropriated Funds Accounting Policy and Reporting Procedures. (Cited in paras 5-6, 5-42, 7-10.)

AR 600-50

Standards of Conduct for Department of the Army Personnel. (Cited in para 2-12.)

FAR

Federal Acquisition Regulation. (Cited in paras 4-2, 4-40, 4-42, 5-9.)

DOD FARs

Department of Defense Federal Acquisition Regulation Supplement. (Cited in paras 1-17, 1-22, 4-42.)

AFARS

Army Federal Acquisition Regulation Supplement. (Cited in paras 1-7, 1-17, 5-14, 5-15.)

Section II Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this publication.

AR 55-38

Reporting of Transportation Discrepancies in Shipments

AR 55-355

Military Traffic Management Regulation

AR 55-357

Terminal Facilities Guide, US Army

AR 55-358

Terminal Facilities Guide, US Navy, Marine Corps, and Coast Guard

DOD Regulation 4000.25-D

DOD Activity Address Directory (DODAAD), Part I, Code to Name

DOD Regulation 4140.17

Military Standard Requisitioning and Issue Procedures (MILSTRIP)

DOD Regulation 4500.32-R, Volume I

Military Standard Transportation and Movement Procedures (MILSTAMP)

DOD Regulation 4500.32-R, Volume II

Military Standard Transportation and Movement Procedures, Transportation Account Codes (TACS)

DOD Directive 1330.2

Funding of Morale, Welfare, and Recreation (MWR) Programs

MIL-STD-129

Military Standard Marking for Shipment and Storage

MTMC Pamphlet 55-2

Management and Stuffing of Containers

Section III

Prescribed Forms

DA Form 4065-R

Army NAF Purchase Request. (Prescribed in para 3-14.)

DA Form 4065-1-R

Army NAF Purchase Request Continuation Sheet. (Prescribed in para 3-14.)

DA Form 4066-R

Purchase Record-Invoice Voucher (NAF). (Prescribed in para 4-16.)

DA Form 4067-R

Order for Supplies or Services/Request for Quotations (NAF). (Prescribed in para 4-11.)

DA Form 4067-1-R

Order for Supplies or Services/Request for Quotations (NAF) (For Purchases of \$10,000 or Less). (Prescribed in para 4-14a.)

DA Form 4068-R

Continuation Sheet (NAF). (Prescribed in para 4-11e.)

DA Form 4069-R

Solicitation, Offer, and Award (NAF). (Prescribed in para 4-22a.)

DA Form 4070-R

Solicitation Instructions and Conditions (NAF). (Prescribed in para 4-24b.)

DA Form 4071-R

Schedule (NAF). (Prescribed in para 24b.)

DA Form 4072-R

Record of Negotiations (NAF). (Prescribed in para 4-10d.)

DA Form 4073-R

Amendment of Solicitation/Modification of Contract (NAF). (Prescribed in para 4-10h.)

DA Form 4074-R

Contract Clauses (Nonappropriated Fund Supply and Service Contracts). (Prescribed in para 2-14a.)

DA Form 4074-1-R

Contract Clauses Nonappropriated Fund Supply and Service Contracts (OCONUS Version). (Prescribed in para 2-14.)

DA Form 4075-R

Contract Clauses (Nonappropriated Fund Construction, Alterations, and Repair Contracts). (Prescribed in para 2-14b.)

DA Form 5564-R

Representations, Certifications, and Acknowledgements. (Prescribed in para 4-24 b.)

DA Form 5565-R

Document Register (Solicitations) (NAF).(Prescribed in para 2-1c .)

DA Form 5566-R

Document Register (Award/Agreements) (NAF).(Prescribed in para 2-1c .)

DA Form 5567-R

Army NAF Solicitation Abstract Form. (Prescribed in para 4-9.)

DA Form 5567-1-R

Army NAF Abstract Form (Continuation Sheet).(Prescribed in para 4-9.)

DA Form 5755-R

Consignment Agreement (Nonappropriated Funds).(Prescribed in para 5-77.)

DA Form 5755-1-R

Consignment Control Sheet. (Prescribed in para 5-77.)

DA Form 5756-R

Concessionaire Contract-Short Term (Nonappropriated Funds).(Prescribed in para 5-21.)

DA Form 5921-R

Record of Significant Events. (Prescribed in para 7-34.)

DD Form 250

Material Inspection and Receiving Report. (Prescribed in para 5-69.1.)

Appendix B

Approval And Purchase Levels For NAF Contracts

Table B-1
Approval authority

Type of Purchase	ADCFA/NAFI Fund Manager	Installation Commander
Entertainment, Supplies, Services	Approves \$25,000 or Less	In Excess of \$25,000
Resale	Approves any Dollar Value	
Construction	See AR 215-1 for Approval for Various NAF Categories	

Table B-2
Purchasing authority

Type of Purchase	NAF Contracting Officer	Supporting Acquisition Office (Note 1)
Entertainment, Supplies, Services	Purchases \$25,000 or Less	In Excess of \$25,000
Resale	Purchases \$50,000 or Less	In Excess of \$50,000
Construction	Purchases \$25,000 or Less	In Excess of \$25,000

Notes:

¹ Includes U.S. Army community and family support center, USAREUR Central NAF Purchasing activity, and the appropriated fund contracting offices.

Appendix C

Suspension and Debarment of Nonappropriated Fund Contractors (Rescinded)

Appendix D

Preparation and Transmittal Of Synopses of NAF Acquisitions to the Commerce Business Daily

D-1. General

When it has been determined by the contracting officer to synopsize NAF acquisition requirements (see paragraph 4-6), the contracting officer will follow these procedures for preparation and transmittal of synopsis actions to the Commerce Business Daily (CBD).

D-2. Publicizing and Response Times

- a. Notice of the contract action will be published in the CBD at least 15 days before issuance of a solicitation.
- b. NAFI's should allow at least 30 days response time for receipt of bids or proposals from the date of issuance of a solicitation.
- c. Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD. This presumption is based on the CBD's confirmation that publication does occur within these timeframes.

D-3. Preparation and Transmittal

Contracting officer will transmit synopses of actions to the CBD by the most expeditious and reliable means available. Synopses should be transmitted by electronic means whenever feasible. Synopses telecommunicated via the AUTODIN network shall be addressed to RUCHODY. Synopses telecommunicated via a TTY (Teletypewriter) using commercial facilities and networks shall be addressed to 62875619. When electronic transmission is not feasible, then synopses should be sent to the CBD via mail or related physical delivery of hard copy and should be addressed to:

U.S. Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, IL 60680

D-4. Style and format

The contracting officer shall prepare the synopsis in the following style and format:

- a. General. Format for hard copy synopses shall employ conventional typing with upper and lower case letters, standard punctuation, and commonly used abbreviations. Hard copy and telecommunicated synopses should follow identical sequence and form although the typing style is different for telecommunicated synopses.
- b. Spacing. Begin each line flush left and use double-spaced lines. If more than one synopsis is to be sent at one time, separate each entry by four line spaces, then begin each new synopsis with the number 1.
- c. Abbreviations. Minimize abbreviations or acronyms to the extent possible except for the commonly recognized two letter State abbreviations.
- d. Standard format. Contracting officers shall prepare each synopsis in the following format. Precede each format item with the number of the item followed by a period (e.g., 1.). Leave two spaces following the period after the item number before beginning the entry. Begin a new line of text for each format item. Each synopsis shall include all 17 format items. When a format item is inapplicable, specify "N/A" two spaces following the period after the item number. Do not include the format item title.

Table D-4A
Standard format

Format item	Explanation/description of entry
1. Action Code	(A single alphabetic letter denoting the specific action related in the synopsis. Choices are limited to the following; P = Presolicitation Notice/Procurement; A = Award announcement; M = Modification of a previously announced procurement action (a correction to a previous CBD announcement); R = Sources Sought; F = Foreign procurement announcement or tender.)
2. Date	(Date on which the synopsis is transmitted to the CBD for publication. Use a four digit number indicating month in two digits and date in two digits (MMDD). All four spaces must be used with preceding 0 for months January thru September. Format: 0225 for February 25.)

Table D-4A
Standard format—Continued

Format item	Explanation/description of entry
3. Year	(Two numeric digits denoting the calendar year of the synopsis. Format 85 for 1985.)
4. Federal Information Processing Standard (FIPS) number	(Agency code number identifying the sending agency. Normally a four or five character field. Usually numeric, but may contain one or more alphabetic characters. Reference is FIPS 95 publication by the National Bureau of Standards which identifies Federal Agencies and related organizations.) Contact your servicing appropriated fund contracting office for this number.
5. Contracting office ZIP Code	(The geographic zip code for the contracting office. Up to nine characters may be entered. When using a nine digit zip code, separate the first five digits and last four digits with a dash. Format: 00000-0000.)
6. Classification Code	(Service or supply code number) (See para i. below.) Each synopsis should classify the services or supplies under one grouping. If the action is for a multiplicity of goods and/or services, the preparer should group the action under the category best defining the overall acquisition based upon value.)
7. Contracting office address	(The complete name and address of the contracting office. Field length is open, but generally not expected to exceed 90 alpha-numeric characters.)
8. Subject	(Insert classification code for ITEM 6, and a brief title description of services, supplies, or project required by the agency. This will appear in the CBD as the bold faced title in the first line of the description.)
9. Proposed solicitation number	(Agency number for control, tracking, identification. For solicitations; if not a solicitation, enter N/A.)
10. Opening/closing response date	(For solicitations; if not a solicitation, enter N/A. Issuing agency deadline for receipt of bids, proposals or responses. Use a six digit date. Format: MMDDYY. Explanation may appear in text of synopsis in Item 17.)
11. Contact point/contracting officer	(Include name and telephone number of contact. Also include name and telephone number of contracting officer if different. This will appear as the first item of information in the published entry. This entry may be alpha-numeric and up to 320 character blocks in length.)
12. Contract award and solicitation number	(For awards; if not an award, enter N/A. The award, solicitation or project reference number assigned by the agency to provide a reference for bidders/subcontractors. Seventy-two blocks available for alpha-numeric entries plus slashes and dashes.) NAFIs are not required to synopsis awards. Contracting officers will determine whether award will be synopsized, however, notification via letter to contractors is acceptable.
13. Contract award dollar amount	(For awards; if not an award, enter N/A.)
14. Contract line item number	(For awards—as desired; if not an award enter N/A.)
15. Contract award date	(For awards; if not an award, enter N/A.)
16. Contractor	(For awards; if not an award, enter N/A.)
17. Description	(This block of space is open ended for entry of the substantive description of the contract action. The last entry(ies) should include reference(s) to any numbered notes or conditions which are applicable and which should appear in the printed text.)

e. The following is an illustrative solicitation synopsis format:

U.S. Department of Commerce
Commerce Business Daily
Post Office Box 5999
Chicago, IL 60680

1. P
2. 0925
3. 85
4. 57936
5. 19111-5096
6. 95
7. USACFSC, NAF Contracting Office, ATTN: DACF-ZSC, Alexandria, VA 22331-0517
8. 71 — Chair
9. DANAF-87-R-0090
10. Closing Date 121587
11. Contact, Mary Drake, 202/697-XXXX/Contracting Officer, Larry Bird, 202/697-XXXX

- 12. N/A
- 13. N/A
- 14. N/A
- 15. N/A
- 16. N/A

17. 71 — Chair — Seat size — 19" w × 18½" d × 4½" thick; height overall; 16½" to 21"; grade: 3; quantity: 597 ea.—del to NAF Warehouse, BLDG 3080, Philadelphia, PA, NAF USA. — Del by 1 MAR 88 — When calling, be prepared to state name, address and solicitation number. — See notes 4, 55. — All responsible sources may submit an offer which will be considered.

f. General format for Item 17, "Description."

(1) Prepare the synopsis to ensure that it includes a clear description of the supplies or services to be contracted for, and is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested.

(2) Include the following elements to the extent applicable, in sequence, with each element separated by two hyphens. Do not include the Roman numeral designator preceding each element.

(i) Supply/service classification code or if more than one classification is involved, that code which covers the largest dollar volume within the overall action.

(ii) Name of supply/service.

(iii) National Stock Number (NSN) if known.

(iv) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained.

(v) Manufacturer, including part number, drawing number, etc.

(vi) Size, dimensions, or other form, fit or functional description.

(vii) Predominant material of manufacturer.

(viii) Quantity, including any options for additional quantities.

(ix) Unit of issue.

(x) Destination information.

(xi) Delivery schedule.

(xii) Duration of the contract period.

(xiii) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(xiv) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the NAFI.

g. Numbered Notes.

(1) The first issue of the CBD each week lists all current "Numbered Notes." The Notes described how to respond to the synopsis of a proposed contract; the qualifications a prospective contractor must have to be considered for an award; and the availability of plans, specifications, or other information.

(2) If the acquisition is subject to the requirements of the Trade Agreements Act of 1979, Numbered Note 12 shall be referenced in the synopsis.

h. Information not covered by Numbered Notes. To alert prospective contractors to information not covered by Numbered Notes, contracting officers should identify the following unusual circumstances in the synopsis:

"Availability of specifications, plans, drawings, or other technical data. It is impracticable to distribute the applicable _____ [insert 'specifications', 'plans', 'drawings,' or other appropriate words] with the solicitation. These contract documents may be examined or obtained at _____."

i. Codes to be used in synopses to identify services or supplies.

(1) Contracting officers shall use the following classification codes to categorize services:

Table D-4B
Classification codes to categorize services

Code	Descriptions
A	Experimental, developmental, test, and basic and applied research work.
H	Expert and consultant services.
J	Maintenance and repair of equipment.
K	Modification, alteration, and rebuilding of equipment.
L	Technical representative services (e.g., services of technical specialists required to assist with the installation, checking, operation, and maintenance of complex equipment).
M	Operation and maintenance of Government-owned facility.
N	Installation of equipment (use code K if the contract also involves modification, alteration, or rebuilding of the equipment).
O	Funeral and Chaplain services.
P	Salvage services (services required to salvage property of any kind).
Q	Medical services.
R	Architect-engineer services.
S	Housekeeping services; e.g.— Utilities (gas, electric, telephone, etc.); Laundry and dry cleaning; Custodial-janitorial; Insect and rodent control; Packing and crating; Storage; Garbage and trash collection; Food; Fueling; Fire protection; Building and grounds maintenance; Care of remains-funerals; and Guards.
T	Photographic, mapping, printing, and publication services; e.g.— Film processing; Cataloging; Charting; Reproduction; Technical writing; Art; and Printing.
U	Training.
V	Transportation services; e.g.— Passenger and cargo transportation Vessel charter; Vessel operation; Tug service; Stevedoring; Vehicle hire; and Railway equipment charter.
W	Lease or rental, except transportation equipment; e.g.— Lease of ADP or EAM equipment; and Lease of earth-moving equipment.
X	Miscellaneous (includes all services not covered by any other code).
Y	Construction; i.e., new construction and major additions to existing buildings or facilities.
Z	Maintenance, repair, and alteration of real property; i.e., painting, building maintenance, alteration and repair, grounds maintenance and repair, roads maintenance and repair.

(2) Contracting Officers will use the following classification codes to describe supplies:

Table D-4C

Classification codes to describe supplies

Code	Descriptions
10	Weapons.
11	Nuclear ordnance.
12	Fire control equipment.
13	Ammunition and explosives.
14	Guided missiles.
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing, and ground handling equipment.
18	Space vehicles.
19	Ships, small craft, pontoons, and floating docks.
20	Ship and marine equipment.
22	Railway equipment.
23	Motor vehicles, trailers, and cycles.
24	Tractors.
25	Vehicular equipment components.
26	Tires and tubes.
28	Engines, turbines, and components.
29	Engine accessories.
30	Mechanical power transmission equipment.
31	Bearings.
32	Woodworking machinery and equipment.
34	Metalworking machinery.
35	Service and trade equipment.
36	Special industry machinery.
37	Agricultural machinery and equipment.
38	Construction, mining, excavating, and highway maintenance equipment.
39	Materials handling equipment.
40	Rope, cable, chain, and fittings.
41	Refrigeration and air-conditioning equipment.
42	Fire fighting, rescue, and safety equipment.
43	Pumps and compressors.
44	Furnace, steam plant, and drying equipment and nuclear reactors.
45	Plumbing, heating, and sanitation equipment.
46	Water purification and sewage treatment equipment.
47	Pipe, tubing, hose, and fittings.
48	Valves.
49	Maintenance and repair shop equipment.
51	Hand tools.
52	Measuring tools.
53	Hardware and abrasives.
54	Prefabricated structures and scaffolding.
55	Lumber, millwork, plywood, and veneer.
56	Construction and building materials.
58	Communication equipment.
59	Electrical and electronic equipment components.
60	Fiber optics materials.
61	Electric wire, and power and distribution equipment.
62	Lighting fixtures and lamps.
63	Alarm and signal systems.
65	Medical, dental, and veterinary equipment and supplies.
66	Instruments and laboratory equipment.
67	Photographic equipment.
68	Chemicals and chemical products.
70	General-purpose ADP equipment, software, supplies, and support equipment.

Table D-4C
Classification codes to describe supplies—Continued

Code	Descriptions
71	Furniture.
72	Household and commercial furnishings and appliances.
73	Food preparation and serving equipment.
74	Office machines.
75	Office supplies and devices.
76	Books, maps, and other publications.
77	Musical instruments, phonographs, and home-type radios.
78	Recreational and athletic equipment.
79	Cleaning equipment and supplies.
80	Brushes, paints, sealers, and adhesives.
81	Containers, packaging, and packing supplies.
83	Textiles, leathers, furs, apparel and shoe findings, tents, and flags.
84	Clothing, individual equipment, and insignia.
85	Toiletries.
87	Agricultural supplies.
88	Live animals.
89	Subsistence.
91	Fuel, lubricants, oils, and waxes.
93	Nonmetallic fabricated materials.
94	Nonmetallic crude materials.
95	Metal bars, sheets, and shapes.
96	Ores, minerals, and their primary products.
99	Miscellaneous

Glossary

(Consolidated Glossary)

Section I

Abbreviations

A&E
architectural and engineering services

A&P
airframe and powerplant

AA
Active Army

AAA
Army Athletic Association

AAFCWF
Army and Air Force Civilian Welfare Fund

AAFES
Army and Air Force Exchange Service

AALISS
Army Automated Library and Information Support System

AAU
Amateur Athletic Union

ABC
American Bowling Congress

ABIF
Army Banking and Investment Fund

ACES
Army Continuing Education System

ACH
automatic clearing house

ACIF
Army Central Insurance Fund

ACRF
Army Central Retirement Fund

ACS
Army Community Service

ACV
actual cash value

ADAPCP
Alcohol and Drug Abuse Prevention and Control Program

ADCFA
Assistant Director of Community and Family Activities

ADP

automated data processing

AFA

Army Flying Activity

AFARS

Army Federal Acquisition Regulation Supplement

AFOAC

Armed Forces Outdoor Activity Centers

AFPEO

Armed Forces Professional Entertainment office

AFR

Air Force regulation

AFRC

Armed Forces Recreation Center

AFRT

Armed Forces Radio and Television

AG

adjutant general

AGL

above ground level

AMWRF

Army Morale, Welfare, and Recreation Fund

AOA

Athletic Officials Association

APF

appropriated fund

APO

Army Post Office

APOE

aerial port of embarkation

AR

Army regulation

ARC

American Red Cross

ARCOM

Army Reserve Command

ARMP

Army Recreation Machine Program

ARMRAS

Army Recreation Machine Route Accounting System

ARNG

U.S. Army National Guard

ASBCA

Armed Services Board of Contract Appeals

ASD (FM&P)

Assistant Secretary of Defense (Force Management and Personnel)

ASPA

Army Sport Parachuting Activity

ASPASO

Army Sport Parachuting Activity Safety Officer

AT

annual training

AUTODIN

Automatic Digital Network

AUTOVON

automatic voice network

AVA-ED

audiovisual aid and educational

AWOL

absence without leave

AWOP

Absence without pay

AWW

average weekly wage

B&AA

balance and activity analysis

BATF

Bureau of Alcohol, Tobacco, and Firearms

BCE

Base Level Commercial Equipment

BCT

basic combat training

BOD

board of directors

BMM

borrowed military manpower

BPA

blanket purchase agreement

BY

budget year

CA

commercial activities

CAC

community activity center

CAO

Central Accounting Office; Central Accounting Officer

CAPCES

Construction Appropriations Programming Control and Execution System

CAT

category

CDR

Commander

CE

Civilian Enterprise

CE

commercial entertainment

CETS

commercial entertainment and touring shows

CFR

Code of Federal Regulations

CFRC

Community and Family Program Review Committee

CFS

Community and family support

CID

Criminal Investigation Command

CINCUSAREUR

Commander in Chief U.S. Army Europe

CISM

Conseil International du Sport Militaire

CMAA

Club Managers Association of America

CO

commanding officer

COBE

command operating budget estimate

COD

Community Operations Division

COE

Corps of Engineers

COMZ

communication zone

CONUS

Continental United States

CONUSA

Continental United States Armies

COR

contracting officer's representative

CPMC

capital purchases and minor construction

CPO

civilian personnel office

CPR

Civilian Personnel Regulation

CPRR

cash, property, and reconciliation record

CRB

Construction Review Board

CRD

Community Recreation Division

CRRC

Construction Requirements Review Committee

CSDA

community and skill development activities

CTA

common table of allowances

CWF

Civilian Welfare Fund

DA

Department of the Army

DAF

Department of the Air Force

DAO

Defense Attaches Office

DAR

daily activity report

DCSPER

Deputy Chief of Staff for Personnel

DCSRM

Deputy Chief of Staff for Resource Management

DD

DOD (Forms Indicator)

DEH

Director of Engineering and Housing

DFAE

Director of Facilities and Engineering

DFE

District Facility Engineer

DIO

Director of Industrial Operations

DO

delivery order

DOD

Department of Defense

DODAAC

DOD activity address code

DOD FARS

Department of Defense Federal Acquisition Regulations Supplement

DODU

Department of Defense Instruction

DOL

Department of Labor

DPCA

Director of Personnel and Community Activities

DRMO

Defense Reutilization and Marketing Office

DTC

Depository Transfer Check

DTG

Date time group

DTS

Defense Transportation System

DVQ

distinguished visitor's quarters

DY

design year

DZSO

drop zone safety officer

EAD

extended active duty

EAN

employer's account number

EBS

employee benefit system

ECECS

executive control and essential command supervision

EEO

equal employment opportunity

EFI

electronic funds transfer

EIC

Earned Income Credit

ELS

Earnings and Leave Statement

ELT

emergency locator transmitter

ENL

enlisted

EOE

element of expense

ERO

European Division, Human Resources Directorate, USACFSC

ESIS

Employer Self Insurance Service

EUSA

Eighth U.S. Army

F&A

Finance and accounting

FAA

Federal Aviation Administration

FAO

finance and accounting office; Finance and Accounting Officer

FAR

Federal Aviation Regulation; Federal Acquisition Regulation

FCC

Family Child Care; Functional Cost Codes

FDA

Food and Drug Administration

FDIC

Federal Deposit Insurance Corporation

FECA

Federal Employees Compensation Act

FEDLINK

Federal Library Information Network

FERO

Far East Division, Hospitality Management Office, USACFSC

FES

factor evaluation system

FFE

furnishings, fixtures, and equipment

FGP

Foster Grandparent Program

FICA

Federal Insurance Contributions Act

5-YP

5-year plan

FO

Field Office

FOA

Field Operating Agency

FOB

free on board

CINCUS FORSCOM

Commander in, Chief U.S. Forces Command

FPM

Federal Personnel Manual

FSLIC

Federal Savings and Loan Insurance Corporation

FITD

full time training duty

FUCA

Federal Unemployment Compensation Act

FY

fiscal year

GADO

General Aviation District Office

GAO

General Accounting Office

GCA

Gun Control Act

G/L

General ledger

GLAC

general ledger accounting code

GM

general merit

GOCOM

General Officer Command

GS

general schedule

GSA

General Services Administration

GTR

Government Transportation Request

GY

guidance year

HASC

House Armed Services Committee

HCA

head of a contracting activity

HMO

health maintenance organization

HQ

headquarters

HQDA

Headquarters, Department of the Army

HSC

U.S. Army Health Services Command

IADT

inactive duty for training

IBOP

International Balance of Payments

LWOP

inactive duty training

IDWW

Intermittent Days/Weeks Worked

IFB

invitation for bids

IFR

instrument flight rules

IFS

Integrated Facilities System

IMA

Information Mission Area

IG

inspector general

IMP

installation master plan

IMPB

installation master planning board

IMPS

institutional meat purchase specifications

IMWRF

Installation Morale Welfare Recreation Fund

IRS

Internal Revenue Service

ISPSO

installation sport parachuting safety officer

ITO

installation travel office

JAG

judge advocate general

JR VET

junior veteran

JTDA

joint table of distribution & allowance (2 services)

JTR

Joint Travel Regulation

LHWCA

Longshore and Harbor Workers' Compensation Act

LN

local national

LOI

letter of instruction

ltr

letter

LWOP

leave without pay

MAAGS

Military Assistance Advisory Groups

MAC

Military Airlift Command,

MACOM

major Army command

MC

major construction

MCA

Military Construction ARMY

MER

Master Employee Record

MFR

Memorandum for Record

MHM

Military Historical Museum

MIA

missing in action

MICRODIS

microform document of information

MILSTAMP

military standard transportation and movement procedures

MOA

memorandum of agreement

MOS

military occupational specialty

MOU

memorandum of understanding

MP

military police

MTMC

Military Traffic Management Command

MTOE

modification table of organization and equipment

MWR

morale, welfare, and recreation

NA

not applicable

NAF

nonappropriated fund

NAFCP

Nonappropriated Fund Construction Program

NAFUPD

Nonappropriated Funds Central Payroll Division

NAFCPS

Nonappropriated Funds Central Payroll System

NAFI

nonappropriated fund instrumentality

NAFIP

NAF Investment Program

NAFISS

NAF Information -Standard System

NAFMC

NAF Major Construction

NATO

North Atlantic Treaty Organization

NCO

noncommissioned officer

NCUA

National Credit Union Association

NCUSIF

National Credit Union Share Insurance Fund

NDER

National Defense Executive Reserve

NFMD

NAF inancial Management Directorate

NGB

National Guard Bureau

NHF DAY

National Hunting and Fishing Day

NLT

not later than

NRA

National Rifle Association; National Restaurant Association

NTE

not to exceed

NTSB

National Transportation Safety Board

OCONUS

Outside the Continental United States

OCPA

Office of the Chief of Public Affairs

ODCSPER

Office of the Deputy Chief of Staff for Personnel

OMA

Operation and Maintenance, Army

OPA

Other Procurement, Army

OPF

official personnel folder

OPM

Office of Personnel Management

OPNS

Operations

OSD

Office of the Secretary of Defense

OTJAG

Office of The Judge Advocate General

OWCP

Office of Workers' Compensation Programs

P&C

purchasing and contracting

P&CO

purchasing and contracting office

PA

Proponent agency

PA

program amount

Pam

phamplet

PARR

program analysis and resource review

PAX

programming, administration, and execution system

PBG

program budget guidance

PBS

package beverage store

PCS

permanent change of station

PDO

property disposal officer

PIF

pilot's information file

PLS

Pay/leave status

PO

purchase order; private organizations

POC

point of contact

POD

port of debarkation

POE

port of embarkation

POW

prisoner of war

PPBS

planning programming budget system

PR

Prevailing rate

PRAM

Preliminary Reports of Army Aircraft Mishaps

PRD

Personnel Requirements Document

PY

Program Year

QSI

quality step increase

R&R

rest and recuperation

RDD

required delivery date

RFP

request for proposal

RFQ

request for quotations

RIF

reduction in force

RIMP

Risk Management Program

RON

remaining overnight

ROTC

Reserve Officer Training Corps

rqn

requisition

RRC

Regional Recruiting Command

SATO

Scheduled Airline Traffic Office

SC

specialty code

SECARMY

Secretary of the Army

SF

Standard Form

SIO

Standard Installation Organization

SIR

safety investigation regulation; serious incident report

SJA

staff judge advocate

SNN

standard NAFI identification number

SOFA

Status of Forces Agreements

SOP

standing operating procedures

SRCP

Special Reserve Component Program

SSA

Social Security Administration

SSN

social security number

SSP

sustained superior performance

STAMIS

Standard Army Management Information System I

STANFINS

Standard Finance System

TAADS

The Army Authorization Documents

TAC

transportation account code

TAG

The Adjutant General

TAGO

The Adjutant General's Office

TCMD

transportation control and movement document

TCN

transportation control number

TD

table of distribution

TDA

table of distribution and allowances

TDY

temporary duty

TFC

Theater Finance Center

TGF

temporary guest facilities

TID

turn-in document

TJAG

The Judge Advocate General

TLF

temporary lodging facilities

TRADOC

U.S. Army Training and Doctrine Command

UA

universal annual

U.S.

United States

USAAA

U.S. Army Audit Agency

USAABF

United States of America Amateur Boxing Federation

USACE

U.S. Army Corps of Engineers

USACFSC

U.S. Army Community and Family Support Center

USACIDC

U.S. Army Criminal Investigation Command

USAFACEUR

U.S. Army Finance and Accounting Center, Europe

USAPT

U.S. Army Parachute Team

USAR

U.S. Army Reserve

USAREC

U.S. Army Recruiting Command

USAREUR

United States Army, Europe

USARJ

United States Army, Japan

USASC

U.S. Army Safety Center

USCF

U.S. Chess Federation

USDA

U.S. Department of Agriculture

USEUCOM

United States European Command

USGA

U.S. Golf Association

USMA

United States Military Academy

USMP

U.S. Modern Pentathlon Program

USO

United Services Organization

USPA

U.S. Parachute Association

USPACOM

U.S. Pacific Command

VFR

visual flight rules

VHF/DF

very high frequency/direction finder

VOQ

visiting officers quarters

WESTCOM

Western Command

WTCA

Water Terminal Clearance Authority

YAC

Youth Activity Center

YIP

Year Installation Program Plan

YTD

year to date

Section II**Terms****Acceptance of an offer**

The act of an authorized representative of Airworthy the NAFI unconditionally agrees to the terms and conditions of the offer. If the offer is mailed, it becomes effective at the time of dispatch.

Acceptance of supplies or services

The act of an authorized representative of the NAFI by which the NAFI-

- a. Assumes ownership of existing and identified supplies tendered; or
- b. Approves specific services rendered as partial or complete performance of the contract on the part of the contractor. Acceptance of supplies or services is final unless there is evidence of fraud, latent defects, or gross mistakes.

Accounting period

The accounting period is considered to be the current accounting year.

Accrued expenses (liabilities)

Costs incurred for commodities or services that have been used before payment has been made for them.

Accrued income

Revenue or income regarded as earned in the period in which sales are made or services rendered, not when actually collected.

Acquisition

Purchasing, renting, leasing, or otherwise obtaining supplies, services or construction.

Actual cash value

The replacement cost of the property at the time of loss, less depreciation. Sentimental, historical, or similar factors do not increase the value of property for insurance purposes.

Administrative workweek

A period of 7 consecutive calendar days designated in advance by the appropriate official.

Adult

An individual who meets age limits as set by AR 215-2 or by a major oversea commander for the purchase of alcoholic beverages.

Adult dependent

An authorized adult family member; i.e., spouse, child 21 years of age or older, or parent, dependent on the sponsor for more than half of his or her financial support.

Advertising

Providing conspicuous notice or information to the public through private and public media.

Agreed amount

A stated value of insured property, the full amount of which is payable if a total loss happens.

Airworthy

Serviceable parachutes and component items which meet the minimum requirements cited in FAR 105.43.

Alcoholic beverage

Potable beverage containing any amount of ethyl alcohol. This includes wines, malt beverages, and distilled spirits.

Alphanumeric

Consisting of numbers and letters.

Amendment

Issued to make changes in quantity, specifications, delivery schedules, terms and conditions, closing dates for submission of RFQs/RFPs, bid opening dates to IFBs, or to correct a defective or ambiguous solicitation.

Appeal authority

The next higher authority over the approving authority, the installation commander if the approving authority is the DPCA; the DPCA if the approving authority is the ADCFA. The appeal authority may not act as both the approving and appeal authority. A person who had personal responsibility or accountability for the property listed on a report will not act as appeal authority. In such cases the next higher authority will be the appeal authority.

Appropriated fund employee

A person employed by the United States Government and paid from funds appropriated by the Congress of the United States.

Appropriated funds

Monies made available to the military departments by the Congress of the United States. Such appropriations are of two types: annual and multi-year. The purposes for which funds are appropriated are specified by Congress in its appropriation acts.

Approval authority

An individual who, by virtue of position or appointment, has the authority to approve the expenditure of nonappropriated funds up to a specified dollar amount. An individual who has approval authority may or may not have signature authority.

Approving authority

The approving authority also appoints investigating officers. Next higher authority over the fund manager/investigating officer. (the DPCA if the fund manager of the IMWRF is the ADCFA; the ADCFA if the fund manager designates the Services Division Chief). No person may act as an approving authority who has personal responsibility for the property listed on a report at the time that property became lost, damaged or destroyed. In such cases, the next higher authority in the chain of command will act as approving authority.

Armed Services Exchanges

Through the exchange system, a program to provide reimbursable goods and services to authorized patrons and funds to support other designated morale programs. Other programs include Headquarters Level Exchange Fund, motion pictures, retail stores, gasoline filling stations, package beverage stores, car washes, and laundries.

Army MWR Fund

Central MWR fund at USACFSC

Army Recreation Machine Fund

Central fund at USACFSC administered for revenue produced from the recreation machine program.

Army Recreation Machine Route Accounting System

System used to support, administer, and control recreation machine operations.

Auction technique

The unauthorized act of divulging to an offeror a price that must be met in order for the offeror to receive further consideration when a purchase, rental, or lease is contemplated.

Authorized users

Military personnel, their family members, and other persons who are eligible per AR 215-2 to participate in MWR programs.

Basic Workweek

The days and hours within the administrative workweek for full-time or for a part-time employee during which an employee is expected to be on duty. These hours may be scheduled as regular, irregular, or rotating tours of duty.

Best and Final Offer

A procedure used during the negotiation process by which all prospective contractors within a competitive range are afforded an opportunity to reevaluate and improve their original proposals. This procedure marks the end of the negotiation process prior to award.

Biathlon

An athletic contest that consists of shooting and cross country skiing.

Bidder/Offeror

Individuals or firms responding to a solicitation issued by a NAFL. Bidder refers to those responding to a formally advertised solicitation; offeror refers to those responding to a solicitation using negotiation procedures.

Boiler plate clauses

Those mandatory and general clauses which are incorporated into all contracts for the acquisition of supplies, services, or construction.

Bona fide guest

A person who is actually a house guest, or a person whose presence as a guest is in response to an invitation for a specific occasion and for whom the host is willing to assume responsibility, including payment for services and products received.

Bona fide resident of the United States

A non-U.S. citizen who resides in the United States, who legally entered the United States, and who has been granted permanent resident status by the Immigration and Naturalization Service as evidenced by Alien Registration Card 1-151. Resident aliens who accompany their sponsors overseas retain their status as bona fide residents.

Bookmobile

A truck or van especially equipped to carry books and other library materials and serve as a traveling branch library.

Books-by-mail service

One which extends the library's collection into the community by mailing materials to library borrowers who request them either through a mail-order catalog or by phone.

Borrowed military manpower

Military manpower from an MTOE unit to perform duties within a TDA activity where a MACOM-approved manpower requirement exists but for which, no manpower spaces have been authorized.

Budget approval

Approval by the MACOM of the IMWRF operating, CPMC, cash and APF/NAF synchronization budgets. This is the financial review which constitutes approval to expend nonappropriated funds, except, for major construction which is initiated after congressional release.

Bundespost

German postal system

Capital expenditure

The purchase or construction of a fixed asset.

Capital purchases CP and minor construction MC

- a. CP: Items ranging in cost from \$1,000 to \$199,000 whether or not construction is involved, and over \$200,000

where there is no construction involved; for example, bulk purchase of like items, or single projects such as a telephone system.

b. MC: Projects ranging in cost from \$200,000 to \$500,000.

Cash (drop) box

A container within the recreation machine stand that collects coins when the hopper contains a predetermined number of coins.

Cash collection (drop)

The activity in which coins are periodically collected from the cash boxes, counted and funds deposited. Representatives from USACFSC, the local command, and the NAFI are required to participate in the process.

Casualty insurance

Insurance which covers a liability imposed on the organization through legal determination or through the acts of one's employees. Included are general or tort liability, automobile and aircraft liability, workers' compensation, and fidelity losses.

Category

A major functional grouping by which DOD MWR activities are classified for control, financial and personnel support, administration, and reporting purposes and based on primary purpose and major financial and patronage characteristics.

Changes (AR 215-4)

a. Cardinal: A major modification of a contract which changes the general scope of the contract. Cardinal changes cannot be made by the issuance of a change order. They must be effected through the use of a supplemental agreement which allows for an equitable adjustment for the contractor.

b. Permissive: A minor modification to a contract, such as a change in accounting data, which can be effected through the use of an administrative change.

Civilian employee general welfare and recreation

A program to provide welfare and recreation for civilian personnel, as governed by AR 215-7.

claim

May be either a request for money from the NAFI under a casualty exposure (against the NAFI) or a request for payment to the NAFI for physical losses (by the NAFI).

Clear and present danger

Those highly unusual circumstances which exist whenever the danger is real, not imaginative, and immediate or imminent, not merely potential; and a showing is made that the use of a NAFI or government passenger carrier would provide protection not otherwise available.

Command representative

An individual designated by the installation/community commander or his or her representative to participate in the cash collection process. This individual cannot be an employee of or assigned to NAFIs participating in the Army Recreation Machine Program.

Commercial insurance

The transfer of risk to a commercial or State corporation through the purchase of an insurance contract. The terms of the contract establish the conditions of acceptance by the insurer and the degree of risk transferred.

Commitment

An administrative reservation of funds against a future obligation.

Community

As used in OCON'US, is synonymous with the term installation.

Community and skill development activities

Social, cultural, recreational, avocational, and self-development activities for the military community.

Commuting distance

The greatest distance a member may be expected to travel daily from home to the duty station. Departure must be a reasonable hour on the reporting date with arrival during the hours specified in the orders.

Compelling operational considerations

Those circumstances with an element of importance which is essential to the successful accomplishment of the agency's mission or is necessary for an agency's efficient operation.

Concessionaire

An entrepreneur placed under contract to an authorized NAN for the purpose of providing services and/or goods.

Consignee

The activity for which the goods are ordered.

Consignor

The contract administration office administering the order. The consignor will be the ordering activity (consignee) if the ordering activity administers the order. Note, however, that if the ordering activity does not have a unique DODAAC, the code of the consignor will reflect the DODAAC of the supporting activity (e.g., the installation transportation office).

Construction

The erection, installation, or assembly of a new facility; the addition, expansion, or alteration of an existing facility; the relocation of a facility from one site to another. See also AR 415-35 and AR 215-5 for guidance on classifying NAF funded construction.

Construction Requirements Review Committee

A HQDA committee that provides an Army-wide perspective and support to all military construction programs.

Constructive change (AR 215-4)

An implied change to a contract, which has the effect of requiring a contractor to perform work different from that prescribed in the original terms of the contract.

Consumable

Merchandise and supplies for which there is a frequently recurring need because of time. This category includes, but is not limited to the following: all items for resale, plastic glasses and cups, paper napkins, cleaning supplies, postage stamps, and aviation fuel.

Container (SEAVAN)

Commercial or Government owned shipping containers that are moved via ocean transportation. Such containers are lifted on and off the ship.

Continental United States (CONUS)

The 48 contiguous States and the District of Columbia.

Controlled deployment

Delaying or retarding the parachute canopy deployment to reduce opening shock.

Controlled equipment

Items that cost \$50 or more, but less than \$1,000 and have an expected useful life of 2 or more years. These are not to be capitalized, but are accounted for on property control records. Items with a unit cost of less than \$50 are not subject to property control unless they are of a sensitive nature.

Cost analysis

A method by which the individual elements of a potential contractors offer are analyzed to determine whether the cost is reasonable.

Current assets

Cash and other assets that may reasonably be expected to be realized in cash, or sold or consumed within a year or less, through the normal operations of business.

Current liabilities

Obligations that will be due within a year and are to be paid out of current assets.

Custodian

See fund manager.

Damages (AR 215-4)

- a.* Consequential: actual losses which occur as a result of a defective product or the failure of a contractor to perform a service.
- b.* Incidental: expenses incurred in connection with repurchase, such as inspections, transportation charges, and commissions.
- c.* Liquidated: a forecast of anticipated expenses that will be incurred if a contractor fails to perform the service or deliver the supplies prescribed by a contractor.

Defects

- a.* Latent: a defect that existed in a product at the time of acceptance, but which could not be discovered by a reasonable inspection.
- b.* Patent: a defect existing in a product at the time of acceptance which can be discovered by a reasonable inspection.

Deferral (AR 215-6)

A postponement of the recognition of an expense already incurred or of a revenue already received. Deferred expenses may also be described as prepaid expenses or deferred charges. Deferred revenues may also be described as unearned revenues, revenues received in advance, or deferred credits.

Dependent

(see family member.)

Direct expense

Costs incurred for the benefit of and traceable to a specific activity.

Dispense

Selling by the drink or a group of separate drinks. Included in dispensing is the sale of wine by the bottle for consumption on the premises.

DODAAC (Department of Defense Activity Address Code)

A unique 6 digit code for each DOD activity listed in the Department of Defense Activity Address Directory (DODAAD) DOD Reg 4000.25, Part 1. The DODAAD is usually available only in microform.

DOD Component

Any of the military departments, DOD agencies, the Army and Air Force Exchange Service, and the Office of the Secretary of Defense.

DOD personnel

Military personnel (including retired members and reservists on active or inactive duty for training) and DOD civilian employees paid from appropriated and nonappropriated funds.

Driveway service

The use of a driver furnished by an authorized commercial motor carrier to transport a vehicle, under its own power, from the point of origin to destination (or port).

Durable supply items

Items that must be accounted for.

Elements of expense

Those specific types of resources consumed in or applied to MWR activities in the execution of MWR programs. Elements of expense listed in appendix C AR 215-1 identify operating and support costs as to purpose, as differentiated from fund fiscal administration (AR 37-100).

Emergency

Those circumstances which exist whenever there is an immediate, unforeseeable, temporary need to provide home-to-work transportation for those employees who are critical to the performance of the agency's efficient operation.

Equitable adjustment

A negotiated settlement with a contractor necessitated by a change to the contract. It generally involves a revision of the price or delivery schedule but may involve any other provision of the contract affected by the change. Such an action is intended to provide a settlement that is fair and reasonable to all parties concerned.

Equivalent license

Certification in writing by the ISPSO or ASPASO (AR 215-2) at meeting the terms for such license as cited in USPA Part 104.

Essential feeding

Food service provided by a club mobilization and emergencies.

Excess foreign currencies

The currencies of countries held by the U.S. Treasury in excess supply for all U.S. Government needs and periodically declared to the Office of Management and Budget of the U.S. Treasury as excess. The lists of countries are transmitted to DOD Components from time to time by appropriate DOD issuances.

Executive control and essential command supervision

Those managerial functions of planning, organizing, directing, coordinating, and controlling the overall operations of MWR programs and activities; consists specifically of program, fiscal, logistical, and other management functions that are separate from the daily working level activities and tasks of the MWR programs. Specifically excluded from this definition is the direct operation of individual MWR programs and activities.

Expendable supplies

Items of supply with a limited life expectancy that lose their identity after use over a short period of time.

Expenses

Costs that have been consumed or realized in the process of current operations, or the production of revenue or income.

Export traffic release

Clearance for export of shipments described in AR 215-4 (para 9-5).

Extended active duty

Full-time duty in the active military service of the United States, entered into with the original expectation of serving for an indefinite or stated period of time, other than active duty for training.

Extraordinary items (AR 215-4)

Events and transactions that are distinguished by their unusual nature and by the infrequency of their occurrence. Such items must be significantly different from the typical or customary business operation.

Facility improvement project

A NAF Major Construction or CPMC project involving a scope of work that will produce a complete and usable improvement to an existing facility. The scope of work includes construction, maintenance and repair, and furnishings and equipment (each separately budgeted/funded) included in the overall improvement plan. A facility improvement project normally will involve some construction or structural change to an existing facility, such as addition or removal of walls, doorways, etc., as opposed to the normal replacement of individual fixed assets.

Facility Manager

Annex or activity manager of the location where the recreation machines are installed.

Failure (AR 215-4)

a. Actual: A failure which occurs when the contract delivery or performance date has passed and the contractor has not delivered the supplies or performed the service prescribed by the contract.

b. Apparent or anticipatory: A failure which occurs when the contractor has not delivered the supplies or performed the service prescribed by the contract and there is insufficient time remaining in the contract period for the contractor to comply with the requirement.

Family member

- a. The spouse of a sponsor;
- b. Unmarried widow or widower of a member or former member of a uniformed service;
- c. Unmarried child of a sponsor, including an adopted child, stepchild, foster child, or ward, who either-
 - (1) has not passed his/her twenty-first birthday;
 - (2) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is (or was at the time of the member's or former member's death) in fact dependent on the sponsor for over one-half of his/her support; or
 - (3) has not passed his/her twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learning approved by a Secretary of an executive department specified in 10 U.S.C., Section 1073, and is (or was at the time of the member's or former member's death) in fact dependent on the sponsor for over one-half of his/her support.
- d. a parent or parent-in-law of a sponsor who is (or was at the time of the member's or former member's death) in fact dependent on the sponsor for one-half of his/her support and residing in the sponsor's household.

Financial management

The aspect of total management that provides direction, guidance, and control of financial operations to achieve program objectives by planning, budgeting, accounting, reporting,, managing resources, auditing, analyzing, and evaluating.

Field library unit

Any size collection of print and nonprint informational materials issued, or loaned by a library or technical processing center to an Army installation, subinstallation, organization, unit or activity. This type of unit is, generally, established to support the informational and recreational needs of personnel in isolated/remote troop locations. Normally, these units do not have an assigned staff (AR 215-2).

Field Office (ARMP)

Operational organization below regional office level that is responsible for day-to-day recreation machine activities within a designated geographic area, e.g., Taegu Field Office.

Field work

Work performed by an employee whose job requires the employee's presence at various locations that are at a significant distance from the employee's place of employment (itinerant-type travel). The designation of a work site as a 'field office' does not, of itself, permit the use of a NAFI or government passenger carrier for home-to-work transportation. Field work exception may not be used when the employee's workday begins at his/her government duty station, or when the employee normally commutes to a fixed location, however far removed from his/her official duty station.

Fixed asset sinking fund

That portion of a NAFI's cash that is segregated and reserved for capital expenditures.

Fixed assets

Assets with productive or service lives longer than 2 years and unit costs of \$1,000 or more, held for use in the production or sale of other assets or services. These assets are capitalized and depreciated. Expenditures of NAFIs for building construction, improvements, and alterations are capitalized and depreciated as fixed assets on the books of the NAFI at the installation level. (Transfer of these assets to the U.S. Army Corps of Engineers upon completion does not affect this). Even if the Army Morale, Welfare, and Recreation Fund fund the project, the completed project is capitalized and depreciated by the installation. Bulk purchases of like items that exceed \$1,000, regardless of unit cost, may be capitalized and depreciated.

Foreign areas

Areas (including the Trust Territory of the Pacific Islands) situated outside the United States, the Commonwealth of Puerto Rico, and the possessions of the United States.

Foreign goods

Goods produced or manufactured in a foreign country and physically located outside the United States, its possessions or Puerto Rico, or in bonded warehouses or a foreign trade zone within the United States, its possessions or Puerto Rico. This interpretation excludes the acquisition of foreign made or produced retail-type merchandise from sources within the United States.

Foreign national NAFI employee

A citizen of an overseas host country or foreign country employed by a NAFI and compensated from NAFs.

Foster child

A child other than the sponsor's child who resides in the sponsor's home whose care, comfort, education, and upbringing have been entrusted to, the sponsor by a court or civilian agency, or by a parent of the child, on a temporary or permanent basis.

Foster Grandparent Program

A program that operates under the auspices of ACTION (42 U.S.C., Section 5001, et. seq.) and offers low-income persons age 60 and over the opportunity to provide individualized attention to children with special and exceptional needs (including those who are neglected, abused or developmentally disabled).

Fraud

The act of willfully taking or attempting to take unfair advantage of the NAFI. Fraudulent acts include, but are not limited to, the following: the offer of or payment of bribes; false statements; submission of false claims; misuse of NAFI property; the use of false weights or measures; deceit either by suppression of the truth or misrepresentation of a material fact; adulteration or substitution of material; falsification of records; arrangements for secret profit or commissions; unauthorized use of, irregularities in connection with, or improper accounting for an impress or petty cash fund; the conspiracy to use any of these devices.

Free fall

Any fall before the parachute is activated, or a jump in which the parachute is activated by means other than static line.

Freestanding food outlet

Any NAM food outlet that is located in a facility physically separate from that NAFI's main operational facility. Sales in such facilities are made to all customers and not restricted to membership when such facilities are operated by clubs.

Free on board

Delivered free to a specified point (used with goods and services). It also designates the point at which the NAFI takes title to the goods or services.

Full-time employee

An employee hired for continuing positions who has a regularly scheduled workweek of 40 hours or more.

Full-time tour of duty

A basic weekly tour consisting of 40 hours of duty each week.

Fund manager

An individual appointed by written authority to a post of responsibility and trust to exercise administrative and executive control of a NAFI and charged with accountability for the NAF resources thereof. The fund manager is the official fund custodian of a NAFI.

General ledger

An accounting record into which all accounting entries flow. From these data the financial statements are prepared.

General scope of the contract

That which is considered by all parties involved to be a fair and reasonable interpretation of the terms and conditions of the contract at the time of entering into the contract.

Government property

Property owned by and on the property records of the U.S. Government and acquired with APFs or as an authorized transfer of NAFI property to Government property records.

Head of a nonappropriated fund instrumentality

The individual responsible for the effective and efficient accomplishment of the functions of the instrumentality.

Home-based child care

A system of family child care (FCC) certified by Army that is provided by military family members operating as

independent contractors from housing located on a military installation or from U.S. Government owned or U.S. Government-leased housing off the installation.

Hopper

A container within the recreation machine that holds coins for the payment of winning combinations.

Improvements and betterments

Modifications (such as fixtures, alterations, installations, and additions that become a permanent part of the building) to a used building which is not insurable. (Examples are: new plumbing, new partitions, new store fronts, permanent wood paneling, and new rooms.) Improvements and betterments must be a major alteration, must change the building, and must increase its value. Recovery is based on the amount of money spent for improvements and will not decrease or increase. The installation of trade fixtures (such as removable showcases), maintenance (such as painting), or repairs to a building are not improvements.

Indirect expenses

Costs incurred for the benefit of the business as a whole and not traceable to a specific activity or effort.

Inspection

The examination and testing of supplies or services to determine whether they conform to contract requirements.

Installation I

The organization level that has overall command responsibility for the NAFIs in which the recreation machines are located. For Europe, installation is designated as community; for the Far East, it is garrison. Organization level that provides command representatives for the cash collection process.

Installation commander

The term installation commander refers to the commander of an installation, activity, or military community, and for the purposes of this regulation also includes the General Manager, Hale Koa Hotel and the Executive Directors, Armed Forces Recreation Center Europe and Dragon Hill Lodge. It may also mean his or her designate for MWR responsibilities.

Installation Morale Welfare Recreation Fund

A nonappropriated fund instrumentality established for the purpose of providing installation/community MWR activities, including food and beverage, retail, recreation, lodging and community support services.

Intermittent employee

This category of employment covers two types of work situations as follows:

a. An employee who has been appointed to serve in a position with no basic workweek is designated as an intermittent on-call employee. An intermittent on-call employee is hired to perform a recurring job, but is not assigned a basic workweek. Intermittent on-call employees are not eligible for any benefits other than overtime pay, shift differential, and environmental differential. There is no obligation to use intermittent on-call employees at all, or to use any individual employee. The determination to use any intermittent on-call employee will be made by the management official concerned.

b. An employee who has been appointed to serve in a position with a basic workweek of less than 20 hours is designated as an intermittent regularly scheduled employee. An employee in this category may occasionally be required to work in excess of 19 hours within a workweek. See AR 215-3. An intermittent regularly scheduled employee must be worked or compensated for at least 2 hours a week, which constitutes the minimum basic workweek.

Inventory

a. Goods or merchandise on hand for resale; individual items of property for which the NAFI is accountable; the sum total of all property owned or controlled by the NAFI.

b. When used as a verb, refers to the periodic physical count and records reconciliation required in the control of NAFI property resources.

c. Goods or merchandise on hand for the production of revenue (AR 215-5 use only).

Investigating officer

Appointed by the approving authority. For NAF property, the investigating officer may be civilian (APF or NAF) or military, and will be appointed under the provisions of AR 15-46.

Irregular tour of duty

A tour which may require service on different shifts, different hours of the day, or different days of the administrative workweeks.

James A. Carroll, Jr. Award (AR 215-2)

This annual award recognizes excellence in Army club management by club managers in the operation and management of clubs.

Janitorial items

Supply items necessary to maintain health, environmental and cleanliness standards expected in U.S. Army facilities.

Joint NAFI

A NAFI established by agreement between the Secretary of the Army and the Secretaries of other military departments in which each department shares in the NAFI's financial support, management policies, and total operation.

Key control custodian

Individual officially designated to control, safeguard, and secure keys to the machines and stands.

Legal review

A review of a purchase document by a contracting activity's legal adviser. Differences of opinion concerning such documents, which arise between a contracting officer and a legal adviser, must be resolved before further action is accomplished.

Leverage

Using of money to operate at a lower interest rate than the rate of return from operations.

Library

A service activity, identified by a U.S. Army property account number (see AR 735-17), and established to acquire, organize, and make available print and nonprint informational materials and to provide information, reference, education, and research services (AR 215-1, AR 215-2).

Library network

An interrelation of two or more libraries or library systems mutually committed to a systematic exchange of information, materials, and services, and sharing of all or selected administrative and technical resources.

Library system

Activities at one or more installations with administrative and technical functions under central technical management. A system with an identifiable main library, and subordinate units such as branch libraries, bookmobiles, and field library units.

Local delivery

The movement of supplies within a metropolitan area in which both the points of pick-up and delivery are located.

Local foreign market

The local or indigenous market area in a foreign country that surrounds a NAFI and serves the same U.S. personnel who are served by such NAFI, as defined by the responsible overseas MACOM. In defining the local foreign market responsible, overseas MACOMs will include only that foreign area in which there is effective competition with the NAFI.

Local Purchase

The purchase of supplies or services by an installation for its own use or for the use of an installation logistically supported by it; not limited to the geographical area in which the purchasing activity is located.

Locally generated income

Income to a NAFI generated from the sale of goods and service, and the collection of fees.

Long term liabilities

Obligations that will not come due within a year.

Loss

An actual reduction in the value of property or net worth through physical damage or destruction, disappearance, theft, or robbery; or the legal determination of liability to pay.

Major command

Refers to Office of the Secretary of the Army; U.S. Army Corps of Engineers; U.S. Military Academy; U.S.A. Finance and Accounting Center; major Army commands; and staff offices of HQDA.

Malt beverage

An alcoholic beverage obtained by fermentation of a malted cereal, with or without adding other starchy material. Malt beverages include beer, ale, and malt liquor.

Manager

An individual who has responsibility for a program, subprogram, or facility in Community Operations, Community Recreation, or Family Support Divisions. Also included in this definition are key personnel in the Community Activities Financial Management and Services Divisions.

Managerial functions

Planning, organizing, directing, coordinating, and controlling individual MWR program functions/activities/facilities at a level below that of direct ECECS. Includes development of detailed policy and procedures in response to broad policies and objectives established by those who exercise ECECS; supervision over those who execute detailed policies and procedures at the operational level. Normally includes responsibility for developing and submitting input to those in a position of Direct ECECS on establishment of MWR programs, budgets, broad policies, and: organizational objectives. Examples of managerial positions are: officer, NCO, and enlisted club branch managers and assistant managers; library, physical activities and community and skills development coordinators; arts and crafts, music and theater, recreation centers, dependent youth activities, sports, outdoor recreation, and library activities directors; library, recreation center, gym, craft shop, drama center, bowling alley, riding stable and youth, center manager, child support service coordinators, and child support facility managers.

Markup

The amount of increase placed on the unit cost to establish the selling price.

Materiality

Strict adherence to any accounting principle is not required if the cost to adhere is greater than the benefit produced and the lack of adherence will not significantly affect reported periodic net income.

Mayoral program

A family support program that uses elected or appointed volunteer mayors to provide a communication link between the installation staff and on-post housing area residents.

Media

Any way used to convey an advertising message; it includes newspapers, magazines, trade and professional journals, special printed matter, circulars, flyers, posters, signs, radio, television, and other promotional devices, such as decals, table tents, and activity calendars.

Memorandum for record

A written, factual summary of events relating to a specific action, signed and dated by the writer, and included in a contract file; may be accomplished on bond paper.

Military community

All active duty soldiers and their family members, retired military personnel and their family members, authorized civilian employees (appropriated and nonappropriated fund and AAFES) and American Red Cross personnel working on the installation; U.S. Army Reserve and National Guard personnel.

Military Departments

The Department of the Army, the Department of the Navy, and the Department of the Air Force.

Military Services

The United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

Military spouse

The wife or husband of an active duty military member of the Armed Forces, including a member of the National Guard or Reserves on active duty. The spouse must have been married to the sponsor before the sponsor received official PCS orders. (This definition applies to military spouse employment preference in NAF positions.)

Modification (AR 215-4)

Any written change in the terms of a contract. Includes bilateral modifications (supplemental agreements) signed by the contractor and the contracting officer and unilateral modifications signed only by the contracting officer (change orders, administrative changes, changes authorized by the contract clauses, or termination notices).

MWR activities (AR 215-1, AR 215-2)

Activities (exclusive of private organizations as defined in AR 210-1) on military installations or on property controlled (by lease or other means) by a military department or furnished by a DOD contractor that provide for the comfort, pleasure, and mental and physical improvement of DOD personnel. These activities include-

- a. Recreational and free-time programs.
- b. Self-development programs.
- c. Resale merchandise and services.
- d. General welfare.

MWR activity or program manager (AR 215-4, AR 215-2)

A supervisory person responsible for an MWR activity or grouping of activities, to include planning, execution, review and analysis, and the integration and use of the APF and NAF resources made available therefor.

MWR Facility

A building, structure, land area, or other real property improvement primarily used for MWR purposes.

MWR programs

A plan or conceptual framework created at any DA level within which one or more MWR activities are established, operated, and maintained.

NAFI Council

A representative body of active Federal personnel (military members or civilian employees) appointed or elected to assist in the management of the NAFI and represent MWR activity patron interests.

a. Governing Council. A decision-making body that exercises general supervision for the commander and directs specific actions in the management of the NAFI.

b. Nongoverning Council. A review body that recommends and reports to the commander on general or specific matters concerning the management of the NAFI.

NAFI employee

A person employed by a NAM and compensated from NAFs.

NAFI property

Tangible assets owned by and on the accountable property records of a NAFI. Excludes U.S. Government property.

NAFI representative

An employee of the NAFI who participates in the cash collection or maintenance process.

Negotiation

An acquisition process by which all parties have their interests maximized and disadvantages to all parties appear equally balanced; used for small purchases.

Newspapers, DOD

Authorized publications that support DOD command communication requirements. Usually, they are distributed daily or weekly. DOD newspapers contain most of the following elements to communicate with the intended DOD readership--commanders' comments, letter-to-the-editor columns, news, features, editorials, sports, announcements, entertainment items, photography, and artwork. The term includes publications in other formats that contain these categories of information also. DoD newspapers do not necessarily reflect the official views of, or endorsement of content by, the Department of Defense. Such newspapers are-

a. Civilian Enterprise (CE) Newspapers. Newspapers published by commercial publishers under contract with the DOD components or their subordinate commands. Normally, the news and editorial content is prepared by the internal information section of the public affairs staff. These newspapers contain advertising sold by the commercial publisher

on the same basis as for CE publications other than newspapers. They become property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract.

b. Funded Newspapers. Newspapers published by DOD components or their subordinate commands using appropriated funds. Normally, the editorial content of these newspapers is prepared by the internal information section of the public affairs staff. Usually, these newspapers are printed under contract by a commercial publisher in accordance with DOD or component printing regulations.

c. Overseas Unified Command (UC) Newspapers. Newspapers such as the Stars and Stripes, approved by the Secretary of Defense to provide world, U.S., and regional news from commercial sources, syndicated columns, editorial cartoons, and applicable U.S. government, DOD, component, and subordinate command news and information.

d. News Bulletins and Summaries. Publications of isolated commands and ships compiled from national and international news and opinion obtained from authorized sources. News bulletins or summaries may be authorized by the next higher echelon of command when no daily English language newspapers are readily available.

Nonappropriated fund instrumentality

An integral DOD organizational entity which performs an essential Government function. It acts in its own name to provide or assist other DOD organizations in providing morale, welfare, and recreational programs for military personnel and civilians. It is established and maintained individually or jointly by the heads of the DOD Components. As a fiscal entity, it maintains custody of and control over its nonappropriated funds. It is responsible for the prudent administration, safeguarding, preservation, and maintenance of those appropriated fund resources made available to carry out its function. With its nonappropriated funds, it contributes to the morale, welfare, and recreational programs of other authorized organizational entities when so authorized. It is not incorporated under the laws of any State or the District of Columbia and enjoys the legal status of an instrumentality of the United States.

Nonappropriated fund

Cash and other assets received by NAFIs from sources other than monies appropriated by the Congress of the United States. NAFs are Government funds used for the collective benefit of those who generate them: military personnel, their dependents, and authorized civilians. These funds are separate and apart from funds that are recorded in the books of the Treasurer of the United States.

Nonpersonal service contract

A service contract which provides for the contractor to hire and supervise individuals who will perform the service. Under this type of contract, NAM personnel- have no authority to instruct or supervise the contractors employees.

Obligation

A financial liability resulting from a contract.

Off-the-shelf-Item

A standard commercial product placed in stock by a contractor prior to the issuance of a request that the contractor supply the item.

Office Collection

A collection of printed materials on loan, from a library or technical processing center, to an office, organization, unit, or activity. These materials are reference books needed to perform office work (AR 215-2).

One step design or build construction projects

Projects in which design is completed and contractor. The finished project is turned over to the Army by a fixed completion date. Sometimes called a turnkey project if it is completely -ft6ished and ready for operation.

Operational functions

a. Specialized: Includes actual performance of prescribed procedures; resolving, day to day problems associated with performance of such procedures. Functions performed normally involve no employee supervisory responsibilities but in all cases require technical education or experience or accountability of appropriated fund resources. Examples include crafts instructor theater technician, outdoor recreation activity instructor, equipment mechanic, physical fitness instructor, and club food service manager.

b. Nonspecialized: Includes actual performance of prescribed procedures; resolving day to day problems associated with performance of such procedures; does not include employee supervisory responsibilities. Examples include sales clerks, tool issue personnel, waiters, waitresses, bartenders, lifeguards, facility attendants (e.g., child care, craft shop, riding stables, youth center), maids, equipment repairers, cooks, greenskeepers.

Option

A provision in a contract which authorizes the purchase of additional quantities of the supplies or services prescribed

by the contract or the extension of the period of performance of the contract. An option provision provides a specified time in which such any action may be accomplished.

Packaged beverage sales

The sale of alcoholic beverages in unopened containers for consumption at a location other than the place of sale.

Parachute demonstration

Parachute jumping designed to improve the image of the U.S. Army and to demonstrate proficiency in support of community relations and recruiting.

Parachute exercise

Authorized sport parachute jump, demonstration, or competition.

Parcel post

A method by which goods are shipped through the mail via the U.S. Postal Service system.

Partial payment

A payment of less than the total dollar amount of the contract. Partial payments are distinguished from progress payments in that partial payments constitute full payment for goods or services received prior to completion of the contract. They are also not to be confused with a payment of less than the contract price resulting from an equitable adjustment.

Part-time tour of duty

A basic weekly tour consisting of from 20 to 34 hours of duty each week. (To provide delineation between full and part-time employment, basic workweeks containing 35 to 39 hours will not be established.)

Personal service contract

A service contract which authorizes the NAFI contracting officer or contracting officer's representative to supervise the individuals performing the service.

Physical Activities

Includes Army sports and athletic training programs and outdoor recreation activities (except that morale support activities do not include the Army's physical training programs as outlined in FM 21-20, Physical Readiness Training, and other training publications).

Port of debarkation

Authorized point of departure from a foreign country or the United States.

Port of embarkation

Authorized point of entry into a foreign country or the United States.

Pre-award survey

The evaluation of a prospective contractor's capability to perform under a contract conducted prior to the award of the contract. Such a survey is usually performed by the contracting officer in the purchasing office.

Premium

Merchandise offered to advertise an activity, product, service, or event as a bonus or as an inducement to buy. Examples of premiums are ballpoint pens and plastic rulers, having an intrinsic item value of less than \$10 retail.

Prepaid expenses

Those expenses representing commodities or services that have been paid for, but not used.

Prevailing rate positions

Prevailing rate positions are all positions paid at an hourly rate.

Price analysis

A method by which the total price of a potential contractor's offer is evaluated to determine the reasonableness of price.

Price ceiling

A realistic monetary limitation that represents the maximum amount that is authorized for payment under a contract; also referred to as ceiling price.

Prime/general contractor

Any supplier, vendor, distributor or firm which has entered into an agreement with the NAFI for the delivery of supplies, the performance of a service, or construction. The prime contractor for a construction contract is normally referred to as the general contractor.

Private organization

A generally self-sustaining non-Federal entity constituted or established and operated on a DA installation by individuals acting outside any official capacity as officers, employees, or agents of the Federal Government or its instrumentalities. It may be incorporated or unincorporated; it must have the written consent of the installation commander or higher authority to operate on a DA installation.

Progress payments

Payments made to a contractor as work progresses under a contract by providing funds prior to final delivery or performance for the purpose of helping to finance acquisitions which have a long lead time. They are based on costs incurred by the contractor (90% of actual costs is the normal payment), a percentage of completion of the contract, or a particular stage of completion.

Project Approval

Conceptual and engineering approval of facility improvement projects accomplished by the MACOMs for projects up to \$500,000 and by HQ, USACFSC for projects over \$500,000. Project approval indicates that the project has been reviewed and approved for feasibility, need, and compliance with design and space requirements. Project approval is not approval to expend funds, although it may be issued simultaneously with budget approval.

Prompt payment discount

A reduction in the total price of a contract when payment is made within a specified time generally established by the contractor.

Property

Tangible objects which have value and the loss of which will deplete the fund equity of NAFIs.

Pro rata

Proportionately according to an exactly calculable factor (an example of a split of proceeds on a pro rata basis would be a 60/40% split of profit after expenses).

Purchase discount

A reduction from the invoice price for the early payment of a liability.

Quality

The degree of excellence of a product.

Quantity discount

A reduction in unit price for a specified larger quantity; also referred to as volume discount.

Quarters

Living accommodations for Army personnel, including those furnished to transients. See AR 210-52.

Quick assets

Cash, temporary investments held in lieu of cash, and current accounts and loans receivable.

Ratification

A ratification is the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the NAFI as a result of the unauthorized commitment.

Real property

Any building or stationary structure and anything permanently installed in such a building or structure; does not include land.

Recreation machine

Electronic machine that accepts coins for play and pays coins for winning combinations.

Recreation machine change fund

A recommended amount of coins to be maintained by the NAFI facility to ensure availability of coins for play by patrons.

Regular employee

a. A regular full-time employee is one who has been appointed to serve in a continuing position (one that is needed for a period in excess of 1 year) and who has a basic workweek of 40 hours.

b. A regular part-time employee is one who has been appointed to serve in a continuing position and who has a basic workweek of 20 to 34 hours. (To provide delineation between full and part-time employment, regularly scheduled tours containing 35 to 39 hours will not be established.

c. A regular full-time or part-time seasonal employee is one who has been appointed to serve in a continuing position with a duty and pay status of at least 6 months but less than 12 months each year.

Regular tour of duty

A tour of duty which requires service on the same days and the same hours or shift of each administrative workweek.

Replacement cost

The cost to repair or replace damaged or destroyed property.

Request for proposal

A written solicitation which provides a potential contractor with the opportunity to offer a price and a plan for accomplishing a particular acquisition action.

Request for quotations (RFQ)

A written solicitation for the primary purpose of gathering pricing and delivery data for a future purchase of standard commercial goods or services. It does not constitute a binding contract between a vendor and the NAFI.

Requirements contract

A contract in which the NAFT agrees to buy its requirement for the supplies or services specified in the contract from the contractor for the period of the contract.

Resale items

Items acquired and held as physical property for the sole purpose of resale to the customer including, but not limited to, subsistence, alcoholic beverages, tobacco products, and sports equipment for pro shops.

Resource sharing

The sharing of materials or bibliographic data among cooperating libraries. Agreements for resource sharing may be informal or formal, temporary or permanent, or general or restricted to specific materials or groups (AR 215-2).

Responsible

A term denoting that a vendor is capable of performing the work prescribed by the solicitation and is financially, morally, and legally qualified to perform the work prescribed by the solicitation. A vendor who cannot meet these criteria is considered to be nonresponsible.

Responsive

A term denoting that a vendor has complied with the terms and conditions of the solicitation. Any change made to the solicitation by the vendor constitutes a counter offer and may be termed nonresponsive.

Retired personnel

All personnel carried on the official retired lists of the uniformed services who are retired with pay, granted retirement pay for physical disability, or entitled to retirement pay whether or not such pay is waived. All members of the Reserve Components retired with pay or granted retired pay for physical disability. Personnel of the emergency officers' retired list of the Army, Navy, Air Force, and Marine Corps who are retired under section 11, PL 85-857.

Rotating tour of duty

A tour of duty which periodically requires service on a different shift, different hours of the day, or different days of the administrative workweeks,

Sale/resale of merchandise and services

a. The acquisition and resale of goods by MWR activities or concessionaires; such transactions involve the ownership transfer of goods from a NAFI to a purchaser.

b. The sale of service by MWR activities or concessionaires, these transactions do not involve the transfer of ownership. Activity fees and charges do not constitute the sale of services. Resale activities are those activities whose primary purpose is to provide reimbursable goods and services to authorized patrons.

Sale in bulk

As applied to State tax-free beer, tobacco products, or soft drinks, means: any sale of beer or soft drinks by the case or prepackaged quantities of four or more bottles or cans; cigarettes by the carton, any lesser quantities of such articles if intended for consumption off the premises; any amount which cannot be reasonably consumed on the premises by the individual purchaser.

Sale price

The unit cost plus the authorized markup. The sale price for all resale merchandise will be clearly posted in the resale activity.

Sealed bidding

An acquisition process using competitive bids in which the most favorable monetary consideration to the NAFI is the primary factor in the determination for award, not used for small purchases.

Self-insurance

The assumption of a risk whereby losses can be paid from a pool of money (reserve) which is replaced periodically.

Self sufficiency

The generation of an annual positive net income (after depreciation) sufficient to provide for operational requirements (expansion, new requirements) and for an NAF capital expenditures not funded by the Army Morale, Welfare, and Recreation Fund (AMWRF), as outlined in Installation MWR Five-Year Program plans. The term 'self sufficiency' refers to the overall IMWRF and not to specific programs or activities.

Service contract

A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item.

Servicing civilian personnel office

The personnel office which provides technical advice, guidance, and administrative staff supervision to the NAFI personnel staff which is responsible for implementing this regulation for all NAFIs, on an installation.

Signature authority

A contracting officer who, by virtue of position or appointment, has the authority to sign a contract obligating nonappropriated funds up to a specified dollar amount. Contracting officers may or may not have approval authority.

Sinking fund

Funds accumulated and set aside from other assets of the entity for the payment of long term liabilities or the replacement of fixed assets.

Sole source

The purchase of a supply or service available only from a single source.

Solicitation

A written request for quotations, request for proposals, or invitation for bids issued when an acquisition is contemplated.

Special duty

The performance of duty with an organization other than the unit to which assigned, while continuing to be administered and accounted for by the unit of assignment. Includes borrowed military manpower and troop diversion.

Special provisions

Clauses which are applicable to an individual purchase. Such provisions are not contained on preprinted forms.

Specifications

- a. Design: Descriptive information which prescribes uniformity and quality of a product.
- b. Performance: Descriptive information which prescribes performance characteristics of the product or service.

Sponsor

Primary person authorized to use an MWR program under Chapter 2, AR 215-2.

Sport parachute activity

An MWR activity for the pleasure, self-development, and physical improvement of its patrons.

Sport parachute jumpmaster

A person authorized by an installation commander to supervise jumps by student parachutists.

Sport parachuting (sky diving)

Recreational parachute jumping as, a voluntary sport activity.

Sport parachutist

A person with a class A or higher international license issued by the USPA, or having equivalent license.

Stand

A standard wooden base for a recreation machine that contains the cash (drop) box.

Standard NAFI identification number

Alphanumeric code number assigned by HQDA that uniquely and exclusively identifies each Army NAFI by its MACOM, installation, classification, and other coded information.

Statement period

A period of time less than 1 year.

Static line jump

A parachute jump in which the parachute is deployed by a static, line attached to the aircraft.

Student sport parachutist

A person undergoing training to become a sport parachutist.

Stuff

The loading of cargo into a SEAVAN (loading a SEAVAN refers to lifting it onto a ship).

Subcontractor

Any supplier, distributor, vendor, or firm which furnishes supplies or services to or for a prime contractor or another subcontractor.

Successor (or successor in interest) NAFI

A NAFI designated by the Army to: provide financial support and assistance to specified or assigned NAFIs, as required; receive and redistribute excess assets of its assigned NAFIs; receive or distribute residual assets of a dissolved or disestablished assigned NAFI; or assume residual liabilities of a dissolved or disestablished assigned NAFI.

Supplies

All items needed for the equipment, maintenance, and operation of a NAFI excluding land and buildings.

Supporting acquisition office

An appropriated fund acquisition office that offers purchasing and contracting assistance to a nonappropriated fund acquisition office.

Surviving spouse

A widow or widower who has not remarried, or one who remarried but reverted through divorce or demise of the spouse to an unmarried status, of the following:

- a.* Members and retired members of the regular Army, Navy, Air Force, Marine Corps, and Coast Guard.
- b.* Members of the reserve components, retired with pay or granted retirement pay for physical disability under 10 U.S.C.
- c.* Members of the reserve components who would have been entitled to retired pay at age 60 and who elected to participate in the Survivor Benefit Plan prior to attaining that age.
- d.* Members of the Fleet Reserve and Fleet Marine Corps Reserve.
- e.* Recipients of the Medal of Honor.
- f.* Members of the reserve components who died as a direct result of injuries incurred while on active duty, active duty for training, or inactive duty training.
- g.* Active duty and retired officers and crews of vessels, and light keepers and depot keepers of the former Lighthouse Service.
- h.* Veterans separated under honorable conditions who are eligible for compensation due to a 100-percent service-connected disability.
- i.* Active duty and retired commissioned officers of the Public Health Service.
- j.* Active duty and retired commissioned officers and ship's officers of the National Oceanic and Atmospheric Administration (NOAA) and its predecessors, the Coast and Geodetic Survey and the Environmental Science Services Administration.

TAGO

The Adjutant General's Office

Technical leveling

Divulging a contractor's work product or trade secrets to a competing contractor.

Technical or professional education/ experience

Includes formal courses of instruction in a recognized college, university and professional or trade school and/or demonstrated experience under competent supervision. Education and experience must qualify individuals to meet performance standards for a profession, technical skill, craft, or trade. Typical examples: Librarians, recreation specialists, specialists in arts, crafts, drama, music, physical education, and sports, mechanics, photography, social work, and child support services; journalists, accountants; and food service managers, and lifeguards.

Temporary employee

A temporary (1) full-time employee is one who has been appointed to serve in a position limited to 1 year or less and who has a basic workweek of 40 hours; (2) part-time employee is one who has been appointed to serve in a position limited to 1 year or less and who has a basic workweek of 20 to 34 hours. (To provide delineation between full and part-time employment, basic workweeks of 35 to 39 hours will not be established).

Temporary guest facilities

Facilities built, leased, acquired, maintained, managed, and operated primarily with NAFs (or contracted or acquired through the NAF contract process) specifically to support authorized patrons and their family members who are in a non-duty or leave status. Facilities may also be used to support active duty soldiers and their family members who are in a TDY or PCS status. Includes guest houses, lodges, recreational guest houses, motels, hotels, and other similarly operated facilities.

Temporary lodging facilities

Those facilities built, leased, acquired, maintained, managed, and operated with APFs specifically to support active duty soldiers and their family members who are temporarily without permanent housing due to permanent change of station (PCS) orders and used to reduce hardships and inconveniences that might otherwise impact on military personnel if such facilities were not available.

Tenant unit

- a.* A military organization physically located at an installation where the organization is of a different service.
- b.* An organization physically located at an installation of the same service when the organization is under the command jurisdiction of a major commander other than the one exercising command jurisdiction over the installation.

Trade discount

A reduction from the normal list price for a reason other than early payment. It is often granted to preferred customers or for volume buying.

Transfer

Change of ownership of a NAF asset through an inter-NAFI transaction, other than a sale. May be cash distribution or conveyance of a non-cash asset from one NAFI to another for a nominal or no consideration.

Transportation account code

A four digit alphanumeric code which identifies the ordering activity and the transportation account to be charged for services rendered during the movement of cargo through the DTS (See DOD Reg 4500.32-R, Vol 2).

Transportation control and movement

The basic MILSTAMP document (DD Form 1384). It provides the data necessary to manage the shipment throughout the transportation cycle.

Transportation control number

A 17-digit alphanumeric code established to identify or control a shipment as it moves through the DTS.

Transportation priority

A number assigned to a shipment which establishes its movement precedence by air, land, or sea within the DTS. For NAF cargo, the transportation priority is usually TP3 (see AR-215-4 (para 9-7) and MILSTAMP App L, pars, 4b).

Truckload/carload

A truck or railcar loaded to its full carrying capacity.

Type of NAF1

A subdivision within a NAFI category, which has certain financial characteristics, a definitive purpose and patronage, or a particular Army MWR program to support, e.g., IMWRF or COA NAFI.

Unauthorized commitment

An agreement that is not binding solely because the NAFI representative who made it lacks the authority to enter into a contract on behalf of the NAFI.

Uniformed personnel

Members of the Army, Navy, Air Force, Marine Corps, and Coast Guard; Cadets and Midshipmen of the United States Army, Navy, Air Force, and Coast Guard academies; commissioned officers, ship's officers and members of the crews of vessels of the NOAA; commissioned officers of the Public Health Service; and members of the Reserve Components while on extended active duty or active duty for training.

Uniformed services

Unless otherwise qualified, the Army, Navy, Air Force, Marine Corps, Coast Guard; commissioned officers of the Public Health Service; and active duty and retired commissioned officers and members of the crews of vessels of the NOAA and its predecessors, the Coast and Geodetic Survey and the Environmental Science Services Administration.

Unilateral agreement

An agreement signed only by the contracting officer.

Unit cost

Represents the invoice cost per unit of merchandise, plus freight, postage insurance, shipping, and any other charges for handling item purchased.

Unit family support group (FSG)

A unit affiliated organization that uses volunteers to provide social and emotional support, outreach, and information to family members prior to, during, and in the aftermath of family separations, such as unit deployments, extended TDYs, and field training exercises.

Unit of merchandise

The standard quantity of measure by which an item is accounted for and sold. For example, each pair, set dozen, package, can, bottle, board foot, ounce, pound, liter, meter and so forth.

Universal annual (UA)

UA positions are all positions paid on an annual salary basis from nonappropriated funds.

Unoccupied

A building that contains its normal furniture, fixtures, or stock but is not used by people.

USPA club safety officer

USPA official appointed by the USPA area safety officer responsible for safety in a specific parachute activity.

Vacant

A building that is not used and is empty.

Ward

A child (other than the sponsor's child) or adult who resides in the sponsor's home whose care has been entrusted to the sponsor by a court (or voluntarily assumed by the sponsor) because of age or a physical, mental, or emotional disability.

Watercraft

Applies to recreational boats owned and operated by NAFIs of the Army.

Water terminal clearance authority

An activity which controls and monitors the flow of cargo into the water terminals. It is also called release authority.

Wind drift indicator

A device to determine wind drift data comparable to data obtained by a full scale parachutist.

Witness

A NAFI patron who attests to the validity of information collected by the cash collection team.

Section III**Special Abbreviations and Terms**

This section contains no entries.

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Unauthorized activities, AR 215-1, 3-15; AR 215-2, 5-8;
Unemployment compensation, AR 215-1 chap 13, sec XIV; AR 215-3, chap 14
Unified/specified commands, NAFIs, AR 215-1, 3-25
Uniforms (MWR), AR 215-1, 10-12
Union-management relations, AR 215-3, chap 13
Unit funds, AR 215-1, 3-23; AR 215-5, chap 9
Unit lounges, AR 215-2, 3-53
Unpriced purchase orders, AR 215-4, 1-22
Unsolicited proposals, AR 215-4, 1-13a(l)(b), 4-42
Use of NAFs Authorized, AR 215-1, 3-14
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User Fees, AR 215-2, 3-39 (See also Fees and Charges)
Vacancy
 Announcements, AR 215-3, 2-4
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 APF, use, AR 215-1, 10-20
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 prevailing rate, AR 215-5, 8-21
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Work week, AR 215-3, 4-3
Workers' Compensation, AR 215-1, chap 13, sec XIII; AR 215-3, chap 15; AR 215-5, 9-5g
Youth services, AR 215-2, chap 8

ARMY NAF PURCHASE REQUEST For use of this form, see AR 215-4; the proponent agency is DCSPER	1. NAFI ADDRESS TELEPHONE NUMBER	2. REQUEST NO. 3. DATE
--	---	-------------------------------

4. ITEMS BEING REQUESTED					
ITEM NO. <i>a</i>	DESCRIPTION OF ITEM/SERVICE <i>b</i>	QUANTITY <i>c</i>	UNIT <i>d</i>	EST UNIT PRICE <i>e</i>	ESTIMATED AMOUNT <i>f</i>

5. REQUESTED DELIVERY DATE 6. DELIVER TO 7. ☐ SOLE SOURCE JUSTIFICATION ATTACHED

8. REQUESTOR'S SIGNATURE AND PRINTED NAME 9. NAFI FUND MANAGER'S SIGNATURE AND PRINTED NAME

10. FUNDS ARE AVAILABLE IN THE AMOUNT OF: \$ _____ 11. ACCOUNTING DATA

12. TYPE TITLE OF CERTIFYING OFFICIAL SIGNATURE DATE:

13. REMARKS

APPROVAL/DISAPPROVAL AND DATE (if applicable)

14. INSTALLATION COMMANDER'S SIGNATURE AND PRINTED NAME DATE:

ARMY NAF PURCHASE REQUEST CONTINUATION SHEET

For use of this form, see AR 215-4, the proponent agency is ODCSPER

1. PAGE

OF

2. DATE

3. Item Being Requested

DATE a	DESCRIPTION OF ITEM/SERVICE b	QUANTITY c	UNIT d	EST. UNIT PRICE e	EST. AMOUNT f

PURCHASE RECORD-INVOICE-VOUCHER

(Nonappropriated Funds)

For use of this form, see AR 215-4; the proponent agency is DCSPER

DATE OF ORDER	ORDER NO.
---------------	-----------

PRINT NAME & ADDRESS OF SELLER (Number, Street, City, State, & ZIP Code)

P
A
Y
E
E

FURNISH SUPPLIES OR SERVICES TO (Name and Address)

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

NAFI NAME AND BILLING ADDRESS

P
A
Y
O
R

TOTAL

DISCOUNT TERMS

% DAYS

DATE INVOICE RECEIVED

ORDERED BY (Signature and Title)

PURPOSE AND ACCOUNTING DATA

PURCHASER—To sign below for over-the-counter delivery of items.

RECEIVED BY

TITLE

DATE

SELLER—Please read instructionsPAYMENT
RECEIVED \$PAYMENT
REQUESTED \$**No Further Invoice Need Be Submitted**

SELLER (Signature)

DATE

BY (Signature)

I certify that this account is correct and
proper for payment in the amount of

DIFFERENCES

\$

Authorized certifying officer

ACCOUNT VERIFIED:
CORRECT FOR
BY

PAID BY CASH

DATE PAID

VOUCHER NO.

OR (Check No.)

DA FORM 4066-R, MAR 82

EDITION OF MAY 72 IS OBSOLETE

INSTRUCTIONS

(Prepare in four copies.)

1. FILLING IN THE FORM

(a) All copies of the form must be legible. To insure legibility, indelible pencil or ball-point pen should be used. **SELLER'S NAME AND ADDRESS MUST BE PRINTED.**

(b) Items ordered will be individually listed. General descriptions such as "hardware" are not acceptable. Show discount terms.

(c) Enter project reference or other identifying description in space captioned. "PURPOSE". Also, enter proper accounting information, if known.

2. DISTRIBUTING COPIES

Copy No. 1—Give to seller. It is for his or her use as the invoice or as an attachment to the commercial invoice.

Copy No. 2—Give to seller for his/her record of the order.

Copy No. 3—

(1) On over-the-counter transactions where delivery has been made, complete receiving report section and forward this copy to the proper administrative office.

(2) On other than completed over-the-counter transactions, forward this copy to location specified for delivery. (Upon delivery, receiving report section is to be completed and this copy then forwarded to the proper administrative office.)

Copy No. 4—Retain in the book, unless otherwise instructed.

3. WHEN PAYING CASH AT TIME OF PURCHASE

(a) Enter the amount of cash paid and obtain seller's signature in the space provided in the Seller section of Copy No. 1. If seller prefers to provide a commercial cash receipt, attach it to Copy No. 1 and check the "paid in cash" block at the bottom of the form.

(b) Distribution of copies when payment is by cash is the same as described above, except that Copy No. 1 is retained by the fund representative when cash payment is made. Copy No. 1 is used thereafter in accordance with the fund instructions pertaining to handling receipts for cash payment.

(Check Appropriate Item)

___ Request for Quotation No. _____
Return _____ copies of this quote by: _____

___ Order for Supplies or Services—No appropriated funds of the United States shall become due or be paid the contractor by reason of this delivery/purchase order.

___ This is not an order. Supplies are of domestic origin unless otherwise indicated by the quoter. The fund reserves the right to consider quotations or modifications thereof received after the date indicated should such action be in the interest of the fund. This is a request for information and quotations furnished are not offers. When quoting complete blocks 9, 10, 15a, 20, 21, 22. If you are unable to quote, please advise. This request does not commit the fund to pay any cost incurred in preparation of this quotation or to procure or contract for supplies or services.

1. CONTRACT/PUR ORDER NO.	2. DELIVERY ORDER NO.	3. DATE.	4. PURCHASE REQUEST NO.
5. ISSUED BY		6. ADMINISTERED BY (If other than 5)	MARK ALL PACKAGES AND PAPERS WITH CONTRACT OR ORDER NUMBER
7. NAME AND ADDRESS OF CONTRACTOR/QUOTER		8. DELIVER TO DESTINATION BY:	
		10. DISCOUNT TERMS	9. DELIVERY FOB ___ DEST ___ OTHER (See Schedule if other)
11. SHIP TO		12. PAYMENT WILL BE MADE BY	13. MAIL INVOICE TO ADDRESS SHOWN IN BLOCK

14. TYPE OF ORDER

___ DELIVERY—This delivery order is subject to instructions contained on this form only and is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract.

___ PURCHASE—Reference your quote _____
furnish the following on terms specified herein. Contract Clauses and Special Requirements, both attached; and delivery as indicated.

___ If Checked, Contractor shall sign "ACCEPTANCE" in block 15b. and return _____ copies.

15a. FOR USE WHEN FORM IS USED FOR REQUEST FOR QUOTATIONS (QUOTER IS TO COMPLETE THIS BLOCK).

PRINTED NAME OF QUOTER SIGNATURE DATE

15b. FOR USE WHEN CONTRACTOR'S SIGNATURE IS REQUIRED FOR ACCEPTANCE OF ORDER

ACCEPTANCE

THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.

NAME OF PERSON AUTHORIZED TO SIGN AND TITLE SIGNATURE DATE

18. ITEM NO.	17. SCHEDULE OF SUPPLIES/SERVICES	18. QUANTITY ORDERED/ * ACCEPTED	19. UNIT	20. UNIT PRICE	21. AMOUNT

*If qty accepted by the fund is same as qty ordered, indicate by ✓ mark.

*If different, enter actual qty accepted below and circle.

24. PRINTED NAME AND SIGNATURE OF CONTRACTING OFFICER AND DATE

22. TOTAL

23. DIFFERENCES

25. AMOUNT VERIFIED CORRECT FOR PAYMENT

26. QUANTITY IN COLUMN 18 HAS BEEN: ___ PARTIAL

___ INSPECTED ___ RECEIVED ___ ACCEPTED AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED ___ FINAL

SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE DATE

27. CHECK NUMBER

29. TYPE OF PAYMENT

___ COMPLETE

___ PARTIAL

___ FINAL

28. DATE OF CHECK

30. SIGNATURE AND TITLE OF PAYMENT OFFICIAL

DATE

**CONTRACT CLAUSES (NONAPPROPRIATED FUND SUPPLY AND SERVICE CONTRACTS)
(FOR PURCHASES OF \$10,000 OR LESS)**

I-1 DEFINITIONS (SEP 1984) - "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts on behalf of the nonappropriated fund instrumentality which is a part of this contract and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

I-2 NONAPPROPRIATED FUND INSTRUMENTALITY (SEP 1984) - The Nonappropriated Fund Instrumentality (NAFI) which is party to this contract is a nonappropriated fund instrumentality of the Department of the Army, NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID THE CONTRACTOR OR CONCESSIONAIRE BY REASON OF THIS CONTRACT. This contract is not subject to The Contract Disputes Act of 1978.

I-4 CHANGES (SEP 1984) FIXED PRICE SUPPLY

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the NAFI in accordance with the drawings, design, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

FOR SERVICE CONTRACTS ONLY - Substitute paragraph (a) of the basic clause above with (a) below:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the days, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Fund in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

FOR PROFESSIONAL SERVICES

ONLY - Substitute paragraph (a) of the basic clause with (a) below and add paragraph (f) below:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

I-20 PAYMENTS (SEP 1984) - The NAFI shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the NAFI if—

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

I-22 INVOICES (SEP 1984)

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(1) Invoice date;

(2) Name of contractor;

(3) Contract number (including order number, if any), contract line item number, contract description of supplies

or services, quantity, contract unit of measure and unit price, and extended total;

(4) Shipment number and date of shipment on (Government bills of lading);

(5) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);

(6) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice; and

(7) Any other information or documentation required by other provisions of the contract (such as evidence of shipment). Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Public Law 97-177):

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which a check for such payment is dated;

(3) Payment terms (e.g., "net 20") offered by the Contractor will not be deemed a "required payment date;" and

(4) The following periods of time will not be included:

(i) After receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 15 days (or any lesser period established by this contract); and

(ii) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

I-25 DISPUTES (SEP 1984)

(a) This contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Army for NAF contracting.

(b) The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(c) All disputes arising under or relating to this contract shall be resolved under this clause.

(d) "Claims," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of the clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(e) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that—

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the NAFI is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by—

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(f) For Contractor's claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims of over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(g) The Contracting Officer's decision shall be final unless the Contractor appeals as provided in paragraph (h) of this clause.

(h) The Contracting Officer's final decision may be appealed by submitting a written appeal to the Armed Services Board of Contract Appeals within 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

I-27 INSPECTION AND ACCEPTANCE (SEP 1984) - Inspection and acceptance will be at

destination, unless otherwise provided. Until delivery and acceptance and after any rejections, risk or loss will be on the Contractor unless it results from negligence of the NAFI.

I-28 TERMINATION FOR CONVENIENCE OF THE FUND (MAR 87) - The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI. If the contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with AR 215-4. To the extent that this contract is for services, and is so terminated, the NAFI shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

I-29 TERMINATION FOR DEFAULT (SEP 1984)

(a) (1) The NAFI may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The NAFI's right to terminate this contract under subdivisions (1)(i) and (1)(ii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the NAFI for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of public enemy, (2) acts of the Government/NAFI in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the NAFI may require the Contractor to transfer title and deliver to the NAFI, as directed by the Contracting Officer, any

(1) completed supplies, and

(2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the NAFI has an interest.

(f) The NAFI shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Clause. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the NAFI.

(h) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

I-39 CLAUSES INCORPORATED BY REFERENCE

- This contract incorporates the following clauses by reference from AR 215-4 with the same force and effect as if they were given in full text. Upon request, Contracting Officer will make full text available. I-3, I-5, I-6, I-7, I-8, I-10, I-11, I-12, I-13, I-14, I-15, I-16, I-17, I-18, I-19, I-21, I-23, I-24, I-26, I-30, I-31, I-32, I-33, I-34, I-35, I-36, I-37, I-38

NAME OF OFFEROR OR CONTRACTOR

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT

M TAB	TAB	TAB	TAB	TAB	PAGE OF
SOLICITATION, OFFER, AND AWARD (Nonappropriated Funds) For use of this form, see AR 215-4; the proponent agency is ODCSPER Award will be made on this form or by other official written notice.					

1. CONTRACT (Proc. Inst. Ident.) NO.	2. SOLICITATION NO. — SEALED BIDDING (IFB) — NEGOTIATED (RFP)	3. DATE ISSUED	4. PURCHASE REQUEST NO.
5. ISSUED BY		6. ADDRESS OFFER TO (If other than Block 5)	

SOLICITATION

7. Sealed offers in original and _____ copies for furnishing the supplies or services described in the Schedule will be received at the place specified in block 6, OR IF HAND-CARRIED, IN THE DEPOSITARY LOCATED IN _____ until _____ (Time, Zone, and Date). If this is a sealed bid solicitation, offers will be publicly opened at that time.

CAUTION—LATE OFFERS. See para 7, DA Form 4070-R, Solicitation Instructions and Conditions. (Section L.)
NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE, OR BE PAID, THE CONTRACTOR BY REASON OF THIS CONTRACT. All offers are subject to the following:

1. The attached Solicitation Instructions and Conditions.	3. The Schedule attached hereto.
2. The Contract Clauses, which are attached or incorporated herein by reference.	4. Such other provisions, representations, certifications, and specifications as are attached or incorporated herein by reference. (Attachments are listed in the Schedule.)

FOR INFORMATION CALL (Name and Telephone No.) (No collect calls): _____

8. The following Checked Sections are incorporated.				TABLE OF CONTENTS			
(✓)	SEC	DESCRIPTION	PAGE(S)	(✓)	SEC	DESCRIPTION CLAUSES	PAGE(S)
PART I—THE SCHEDULE				PART II—CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III—LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS/WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV—REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTR., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

9. **OFFER**

In compliance with the above, the undersigned offers and agrees to furnish any or all items upon which prices are offered and to deliver at the designated point(s) within the time set forth in the schedule, if this offer is accepted within _____ calendar days from the date specified for receipt of the offers (60 calendar days unless a different period is inserted by the offeror).

10. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated.)	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

11. DISCOUNT FOR PROMPT PAYMENT (See para 8, DA Form 4070-R) (Section L.)
_____ % 10 Calendar Days; _____ % 20 Calendar Days; _____ % 30 Calendar Days; _____ % _____ Calendar Days.

12. OFFEROR'S NAME & ADDRESS (Street, City, State, & ZIP Code) (Include Area Code and Telephone No.) _____

13. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER _____

Check if Remittance Address is Different from above. _____
_____ Enter such address in schedule.

14. SIGNATURE	15. OFFER DATE
---------------	----------------

AWARD (To Be Completed by Fund)

16. ACCEPTED AS TO ITEMS NUMBERED	17. AMOUNT	18. ADMINISTERED BY (If other than Block 5)
19. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK _____		21. PAYMENT WILL BE MADE BY
20. ACCOUNTING DATA		
22. NAME AND SIGNATURE OF CONTRACTING OFFICER		23. AWARD DATE

SOLICITATION INSTRUCTIONS AND CONDITIONS (NONAPPROPRIATED FUNDS)

For use of this form, see AR 215-4; the proponent agency is ODCSPER

1. DEFINITIONS

As used herein:

- a. The term "solicitation" means an invitation for bids (IFB) when using sealed bidding and a request for proposal (RFP) when an acquisition is negotiated.
- b. The term "offer" means "bid" when sealed bidding is used and "proposal" when an acquisition is negotiated.

2. PREPARATION OF OFFERS (FEB 1987)

- (a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror's risk.
- (b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.
- (c) For each item offered, offerors shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price/cost for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction the same extent and in the same manner as any other mistake.
- (d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- (e) Offerors must state a definite time for delivery of supplies or for performances of services, unless otherwise specified the solicitation.
- (f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

3. EXPLANATION TO PROSPECTIVE OFFERORS (FEB 1987)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

4. ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS (FEB 1987)

Offerors shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer; or (c) by letter or telegram. The NAFI must receive the acknowledgment by the time specified for receipt of offers.

5. SUBMISSION OF OFFERS (FEB 1987)

- (a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.
- (b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice, if that notice is received by the time specified for receipt of offers.
- (c) Items samples, if required, must be submitted within the time specified for receipt of offers, unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to the NAFI and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

6. FAILURE TO SUBMIT OFFER (FEB 1987)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

7. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OR PROPOSALS (FEB 1987)

- (a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:
 - (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 - (2) Was sent by mail (or telegram if authorized) and it is determined by the NAFI that the late receipt was due solely to mishandling by the NAFI after receipt at the Government installation; or
 - (3) is the only proposal received.
- (b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1) and (2) above.
- (c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the NAFI after receipt at the Government installation.
- (d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, quotation, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or quoters should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- (e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.
- (f) Notwithstanding paragraph (a) above, a late modification of an otherwise successful proposal that makes its terms more favorable to the NAFI may be considered at any time it is received and may have been accepted.
- (g) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

8. DISCOUNTS FOR PROMPT PAYMENT (FEB 1987)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date a proper invoice or voucher is received in the office specified by the NAFI, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which a wire transfer was made.

9a. CONTRACT AWARD (FEB 1987) (NEGOTIATED PROCUREMENTS ONLY)

(a) The NAFI will award a contract resulting from the solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the NAFI, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The NAFI may (1) reject any or all offers if such action is in the public interest, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

(c) The NAFI may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) The NAFI may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The NAFI reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the NAFI may accept an offer (or part of an offer, as provided in paragraph (d) above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the NAFI.

(f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

9b. CONTRACT AWARD-SEALED BIDDING (AUG 1988)

(a) The NAFI will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the NAFI considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The NAFI may (1) reject any or all bids, (2) accept other than the lowest bid, and (3) waive informalities or minor irregularities in bids received.

(c) The NAFI may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The NAFI reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

10. LABOR INFORMATION

General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contract Work Hours Standards Act (40 U.S.C. 327-330), and the Service Contract Act of 1965 (41 U.S.C. 351-357) may be obtained from the Department of Labor, Washington, D.C. 20210, or from any regional office of that agency. Requests for information should include the solicitation number, the name and address of the issuing agency, and a description of the supplies or services.

11. ORDER OR PRECEDENCE (FEB 1987)

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications);

(b) representations and other instruction; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

12. SITE VISIT (FEB 1986)

Offerors or quoters are urged and expected to inspect the site where the services are to be performed and satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

13. TYPE OF CONTRACT (FEB 1987)

The NAFI contemplates award of a _____ (Contracting Officer insert specific type of Contract) contract resulting from this solicitation.

14. EVALUATION OF OFFERS FOR MULTIPLE AWARDS (AUG 1988)

Unless otherwise stated and in addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the NAFI that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating proposals, that \$250 would be the administrative cost to the NAFI for issuing and administering each contract awarded under this solicitation and individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the NAFI, including the assumed administrative costs.

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SCHEDULE (Nonappropriated Funds)

SOLICITATION NO.

For use of this form, see AR 215-4; the proponent agency is DCSPER

1. A DESCRIPTION OF THE GOODS AND/OR SERVICES TO BE FURNISHED, THE SPECIFICATIONS, THE DISCOUNTS, THE TIME AND THE PLACE OF DELIVERY, AND ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE PROPOSAL, ARE SET FORTH BELOW OR ATTACHED HERETO.

2. ITEM NO. <i>a</i>	DESCRIPTION OF ITEM/SERVICE <i>b</i>	QUANTITY <i>c</i>	UNIT <i>d</i>	UNIT PRICE <i>e</i>	ITEM PRICE <i>f</i>

3. NAME OF OFFEROR

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RECORD OF NEGOTIATIONS (Nonappropriated Funds)

For use of this form, see AR 215-4; the proponent agency is DCSPER

1. CONTRACT OR OTHER IDENTIFYING NUMBER

2. DESCRIPTION OF SUPPLIES OR SERVICES (Include total value of contract.)

3. THIS REPORT IS A SUMMARY OF NEGOTIATIONS AND SHALL INCLUDE AS A MINIMUM THE FOLLOWING DATA:

a. NUMBER OF SOURCES SOLICITED _____ (If only one source solicited, state justification in Item 6 below.)

b. NUMBER OF OFFERS RECEIVED _____ (List name of each source contacted, quotations received and delivery dates in Item 4 below.)

c. AWARD MADE TO LOWEST OFFEROR ____ YES ____ NO (If "No", explain in Item 4 below.)

4. NARRATIVE SUMMARY OF NEGOTIATIONS (Use reverse, if necessary.)

5. PRICE REASONABLENESS BASED ON (Check one or more and, if "adequate competition" is not checked, include verification details in "Remarks" paragraph below.)

____ a. Adequate Competition

____ b. Comparison with Previous Purchase of Same or Similar Item

____ c. Catalog/Published Price List/Advertisement

____ d. Value Analysis by Buyer

____ e. Buyer's Personal Knowledge of Item

____ f. Remarks

6. REASON FOR SOLICITING ONLY ONE SOURCE

7. I HAVE DETERMINED THAT _____

(Name of Proposed Contractor)

IS RESPONSIBLE TO SUCCESSFULLY COMPLETE THE PROPOSED CONTRACT BECAUSE (Cite reasons.)

8. TYPED NAME OF BUYER

9. SIGNATURE

10. DATE

11. TYPED NAME OF CONTRACTING OFFICER

12. SIGNATURE

13. DATE

M	TAB	TAB	TAB	TAB	TAB	TAB
AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT (Nonappropriated Funds)						PAGE OF
For use of this form, see AR 215-4; proponent agency is ODCSPER						1

1. AMENDMENT/MODIFICATION NO.	2. EFFECTIVE DATE	3. REQUISITION/PURCHASE REQUEST NO.	4. PROJECT NO. (If applicable)
5. ISSUED BY		6. ADMINISTERED BY (If other than block 5)	

7. CONTRACTOR NAME AND ADDRESS (Include Street, City, County, State, and ZIP Code)	8. AMENDMENT/MODIFICATION
	— AMENDMENT OF SOLICITATION
	DATED _____
	NO. _____
	— MODIFICATION OF CONTRACT/
	ORDER DATED _____
	NO. _____

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS

— The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of Offers — is extended, — is not extended. Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods.

(a) By signing and returning — copies of this amendment; (b) by acknowledging receipt on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

10. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE, OR BE PAID, THE CONTRACTOR BY REASON OF THIS CONTRACT.

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACT/ORDERS

— (a) This Change Order is issued pursuant to —
The Changes set forth in block 12 are made to the above numbered contract/order.

— (b) The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, etc.) set forth in block 12.

— (c) This Supplemental Agreement modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION

Except as provided herein, all terms and conditions of the document referenced in block 8, as heretofore changed, remain unchanged and in full force and effect.

13. SIGNATURE REQUIREMENT

— CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT.

— CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN — COPIES TO ISSUING OFFICE

14. NAME AND SIGNATURE OF CONTRACTING OFFICER	DATE SIGNED	15. NAME OF CONTRACTOR/OFFEROR (Signature of person authorized to sign)
		16. NAME AND TITLE OF CONTRACTOR/OFFEROR DATE SIGNED

CONTRACT CLAUSES
(NONAPPROPRIATED FUND SUPPLY AND SERVICE CONTRACTS)

For use of this form, see AR 215-4, the proponent agency is ODCSPER

- I-1. DEFINITIONS
- I-2. NONAPPROPRIATED FUND INSTRUMENTALITY
- I-3. COVENANT AGAINST CONTINGENT FEES
- I-4. CHANGES
- I-5. OFFICIALS NOT TO BENEFIT
- I-6. GRATUITIES
- I-7. NEW MATERIAL
- I-8. VARIATION IN QUANTITY
- I-9. EXAMINATION OF RECORDS
- I-10. CONVICT LABOR
- I-11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION--GENERAL
- I-12. WALSH-HEALEY PUBLIC CONTRACTS ACT
- I-13. EQUAL OPPORTUNITY
- I-14. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS
- I-15. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS
- I-16. BUY AMERICAN ACT, TRADE AGREEMENTS ACT AND THE BALANCE OF PAYMENTS PROGRAM
- I-17. CERTAIN COMMUNIST AREAS
- I-18. INSURANCE
- I-19. TAXES
- I-20. PAYMENTS
- I-21. DISCOUNTS FOR PROMPT PAYMENT
- I-22. INVOICES
- I-23. EXTRAS
- I-24. ASSIGNMENT OF CLAIMS
- I-25. DISPUTES
- I-26. NAFI PROPERTY
- I-27. INSPECTION AND ACCEPTANCE
- I-28. TERMINATION FOR CONVENIENCE
- I-29. TERMINATION FOR DEFAULT
- I-30. COMMERCIAL WARRANTY
- I-31. ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION
- I-32. RESERVED
- I-33. NON-WAIVER OF DEFAULTS
- I-34. PERMITS AND LICENSES
- I-35. REMOVAL OF CONTRACTOR'S EMPLOYEES
- I-36. SAVE HARMLESS
- I-37. SERVICE CONTRACT ACT OF 1965 (Contracts over \$2,500)
- I-38. SERVICE CONTRACT ACT OF 1965 (Contracts up to \$2,500)

I-1. DEFINITIONS (SEP 1984).

(a) "Head of the agency" (also called "agency head") or "Secretary of the Army, the Under Secretary, and the term "authorized representative" means any person, or board (other than the Contracting Officer) authorized to act for the head of agency or secretary.

(b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts on behalf of the nonappropriated fund instrumentality which is a party to this contract and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

I-2. NONAPPROPRIATED FUND INSTRUMENTALITY (SEP 1984).

The Nonappropriated Fund Instrumentality (NAFI) which is party to this contract is a nonappropriated fund instrumentality of the Department of the Army. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID THE CONTRACTOR OR CONCESSIONAIRE BY REASON OF THIS CONTRACT. This contract is not subject to The Contract Disputes Act of 1978.

I-3. COVENANT AGAINST CONTINGENT FEES (SEP 1984).

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach of violation of this warranty the NAFI shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

I-4. CHANGES (SEP 1984) FIXED PRICE SUPPLY.

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the NAFI in accordance with the drawings, design, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer decides that the facts justify it, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(c) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

FOR SERVICE CONTRACTS ONLY

Substitute paragraph (a) of the basic clause above with (a) below:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the days, days of the week, etc.).
- (3) Place of performance of the services.

FOR SERVICES AND SUPPLY CONTRACTS ONLY

If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.)
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be especially manufactured for the Fund in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery

FOR PROFESSIONAL SERVICES ONLY

Substitute paragraph (a) of the basic clause with (a) below and add paragraph (f) below:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

I-5. OFFICIALS NOT TO BENEFIT (SEP 1984).

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

I-6. GRATUITIES (SEP 1984).

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or designee determines that the Contractor, its agent, or other representative --

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an official, or employee of the United States or the NAFI; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the NAFI is entitled to pursue the same remedies as in a breach of the contract.

(d) The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I-7. NEW MATERIAL (SEP 1984).

Unless this contract specifies otherwise, the Contractor represents that the supplies and components, including any former Government or NAFI property, are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in the NAFI's interest, the Contractor shall so notify the Contracting Officer in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to the NAFI if the Contracting Officer authorizes the use of used or reconditioned supplies or components.

I-8. VARIATION IN QUANTITY (SEP 1984).

A variation in quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

I-9 EXAMINATION OF RECORDS (SEP 1984)

(a) This clause is applicable if the amount of this contract exceeds \$10,000, and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The Contractor agrees to include the clause in (a) above, in all subcontracts hereunder that exceed \$10,000.

I-10. CONVICT LABOR (SEP 1984).

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

I-11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION - GENERAL (SEP 1984)

(This clause does not apply to contracts subject to the provisions of the Walsh-Healey Public Contracts Act.)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (The Act) is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

(a) **Overtime requirements.** A Contractor or subcontractor shall not require or permit any laborer (including watchmen and guards) or mechanic to work in excess of 8 hours in any calendar day, or 40 hours in any workweek, on any part of the contract work subject to the Act, unless, the Laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day, or 40 hours in any workweek, whichever produces the greater amount of overtime.

(b) **Violation, liability for unpaid wages, and liquidated damages.** If the terms of paragraph (a) above are violated, the Contractor and any subcontractor responsible for the violation shall be liable to any affected employee for unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. These damages are computed for each individual laborer or mechanic at \$10 for each calendar day on which the employee was required or permitted to be employed in violation of paragraph (a) above.

(c) **Withholding for unpaid wages and liquidated damages.** The Contracting Officer may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor under this contract or any other federal contract with the same Prime Contractor, such amounts as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b) above.

(d) **Subcontract.** The contractor and subcontractors at any lower tier shall insert paragraphs (a) through (d) of this clause in all subcontracts.

(e) **Records.** The Contractor shall maintain payrolls and basic payroll records containing the information specified in 29 CFR 5.5 (c). These records shall be preserved for 3 years from contract completion. The contractor will make the records available for inspection, copying or transcription by authorized representatives of the NAFI and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

I-12. WALSH-HEALEY PUBLIC CONTRACTS ACT (SEP 1984).

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

I-13. EQUAL OPPORTUNITY (SEP 1984).

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contract and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b) (1) through (11) below. Upon request the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or worker representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, or orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award unless filed 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determined that the Contractor is not in compliance with this clause any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government/NAFI contracts, under the procedures authorized in Executive Order 11246, as amended; in addition, sanctions may be imposed and remedies involved against the Contractor as provided in Executive Order 11246, as amended, the rule regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b) through (11) of this clause in every subcontract or purchase order that is not exempt by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing the terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States enter into the litigation to protect the interest of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR Subpart B.

I-14. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (SEP 1984).

(a) **Definitions.** "Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment office assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Island.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause--

(1) Includes, but is not limited to, openings that occur in jobs categorized as--

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and nonsupervisory;
- (v) Technical; and
- (vi) Executive, administrative, and professional positions compensated on salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement nor openings in an educational institution that are restricted to students of the institution.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise the qualified special disabled and Vietnam Era veterans without discrimination based on their disability or veterans' status in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff and termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S. 793) (the Act), as amended.

(c) Listing openings.

(1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from the requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting refer of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of the clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations with (i) the Government's/NAF's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) requirement of listing would not be in the Government's/NAF's interest.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filed outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that Contractor proposes to fill from within its own organization or under a customary traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its organization or an employer-union arrangement for that opening.

(e) Posting.

(1) The Contractor agrees to post employment notices stating (i) the Contractor obligation under the law to take affirmative action to employ and advance in employment qualified special disabled and veterans of the Vietnam era and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employ and applicants for employment. They shall be in a form prescribed by the Director Office of Federal Contract Compliance Program, Department of Labor (*Director*), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of the Act, and is committed to take affirmative action to employ and advance in employment qualified special disabled and Vietnam Era veterans.

(f) **Noncompliance.** If the Contractor does not comply with the requirements of this clause appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) **Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I-15. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (SEP 1984).

(Applicable to Contracts over \$2,500)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as-

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Advertising;
- (v) Layoff or termination;
- (vi) Recruitment;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with rules, regulations, and relevant orders of the Secretary of Labor (*Secretary*) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793), as amended.

(b) Postings.

(1) The Contractor agrees to post employment notices stating: (1) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (2) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director Office of Federal Contract Compliance Program, Department of Labor (*Director*).

(3) The Contractor shall notify each labor union or representative of workers with which it has collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) **Noncompliance.** If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act, provided by or through the Contracting Officer under the Rehabilitation Act of 1973 (29 U.S. 793)(the Act), as amended.

(d) **Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I-16. BUY AMERICAN ACT, TRADE AGREEMENTS ACT, AND THE BALANCE OF PAYMENTS PROGRAM (OCT 1984).

(a) This clause implements the Buy American Act (41 U.S.C. Section 101e-d), the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country end products or as designated country end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies incorporated directly into the end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) a item listed in a defense cooperation country agreement.

(iii) "End product" means those articles, materials and supplies to be acquired for public use under the contract.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in United States if the cost of its qualifying country components, and its components which are mined, produced, or manufactured in the United States exceed fifty percent (50%) the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (*whether or not a duty-free entry certificate may be issued*). A component shall also be considered have been mined, produced, manufactured in the United States (*regardless of its source in fact*) if the end product in which it is incorporated is manufactured in the United State and the component is of a class or kind (A) Determined by the Government to be mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) As to which Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(v) "Foreign end product" means an end product other than domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) and FMS/Offset arrangement country end product when the applicable Determination and Findings has been made Waiving the Buy American Act restrictions; or (C) defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) and end product manufactured in a participating country if the cost of its qualifying country components and its components combined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/Offset arrangement country, or (B) an end product manufactured in an FMS/Offset arrangement country if the cost of its quality country components and its components which are mined, produced, or manufacture in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation the end product and any duty whether or not duty is, in fact paid. To obtain the waiver necessary to accord preferential treatment for an FMS/Offset arrangement country end product, see the procedures at DOD FAR Supplement 225.7310(c)(2)(i).

(ix) "Defense cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(x) "Designated country end product" means an article that (A) is wholly the growth product, or manufacture of the designated country, or (B) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a new character, or use distinct from that of the article or articles from which it transformed. The term includes services (except transportation services) incidental to its supply. Provided, That the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) The Contractor agrees that there will be delivered under this contract only domestic products unless, in its offer, it specified delivery of foreign and products in the clause entitled Buy American Act, Trade Agreements Act, and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product or a designated country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, whichever is certified, or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirement of this clause; however, Contractors may not supply an end product list at DOD FAR Supplement 225.403(70) with a total value at or above that specified in FAR Subpart 25.4 from a country not listed at FAR 25.401, except as provided at DOD FAR Supplement 225.402(b).

(c) Offers will be evaluated in accordance with the policies and procedures of AR 215-4, and referenced parts of FAR and its supplements.

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern, or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DOD FAR Supplement 225.1 for procedures and exceptions.

(c) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See AR 215-4, and referenced parts of its supplements.

1-17. CERTAIN COMMUNIST AREAS (SEP 1984).

(a) Unless advance written approval of Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract:

(1) Any Supplies or services originating from source within the Communist area of North Korea, Vietnam, Cambodia, or Cuba; or

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

1-18. INSURANCE (SEP 1984).

(Applicable to contracts over \$25,000.)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract, in no event shall the amount be less than the minimum requirements established by applicable state and local regulations and laws.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the NAFI's interest shall not be effective (1) for such period as the laws of the States in which the contract is to be performed prescribed at (2) until 30 days after the insurer of the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of the clause, including this paragraph (c), in subcontracts under the contract that requires a work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. At least 5 days before entry of each such subcontractors' personnel on the Government installation, the Contractor furnish (or measure that there has been furnished) to the Contracting Officer a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

1-19. TAXES (SEP 1984).

(a) Except as may be otherwise provided in this contract, the contract price includes all taxes, duties or other public charges in effect and applicable to this contract on the contract date, except any tax, duty, or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the NAFI or on its behalf, or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price through error otherwise, the contract price shall be correspondingly reduced.

(b) If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or in part from the payment or the burden of any, tax, duty, or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or a subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not included in the contract price and which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

(c) No adjustment of less than \$100 shall be made in the contract price pursuant to this paragraph.

1-20. PAYMENTS (1984).

The NAFI shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in his contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payments shall be made on partial deliveries accepted by the NAFI if:

(a) The amount due on the deliveries warrants it, or

(b) The Contractor requests it and the amount due to the deliveries is at least \$1,000 or 50 percent of the total contract price.

1-21. DISCOUNTS FOR PROMPT PAYMENT (AUG 1988).

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date a proper invoice or voucher is received in the office specified by the NAFI, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which a wire transfer was made.

1-22. INVOICES (JUN 1989).

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(1) Name and address of the contractor

(2) Invoice date.

(3) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(4) Description, quantity, unit of measure, unit price and extended price of supplies delivered or services performed.

(5) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(6) Name and address of contractor official to whom payment is to be sent (must be the same as that on the contract or on a proper notice of assignment).

(7) Name (where practicable), title, phone number, mailing address of person to be notified in event of defective invoice.

(8) Any other information or documentation required by the contract (such as evidence of shipment).

Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Public Law 97-177, as amended by P.L. 100-496):

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which check for such payment is dated;

(3) Payment terms (e.g., "net 20") offered by the contractor will not be deemed a "required payment date", and

(4) The following periods of time will not be included:

(i) after receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 7 days (3 days on contracts for meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils); and

(ii) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

I-23. EXTRAS (SEP 1984).

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

I-24. ASSIGNMENT OF CLAIMS (SEP 1984).

The Contractor cannot assign any rights or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

I-25. DISPUTES (SEP 1984).

(a) This contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Army for NAF contracting.

(b) The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(c) All disputes arising under or relating to this contract shall be resolved under this clause.

(d) "Claims" as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(e) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that:-

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the NAFI is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by:-

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(f) For Contract claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(g) The Contracting Officer's decision shall be final unless the Contractor appeals as provided in paragraph (h) of this clause.

(h) The Contracting Officer's final decision may be appealed by submitting a written appeal to the Armed Service Board of Contract Appeals with 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

I-26. NAFI PROPERTY (SEP 1984).

The Contractor shall sign a receipt for any property furnished by the NAFI and upon expiration of this contract shall return such property to the NAFI in the same condition as when received, except for fair wear and tear.

(a) Such property will be supplied to the Contractor in a condition suitable for the intended use and in a timely manner.

(b) If property is received in a less than functional state or in a time frame which should delay Contractor's performance, the Contractor shall, upon receipt of property, notify the Contracting Officer, detailing the facts, and as directed by the Contracting Officer and at NAFI expense, either repair, modify, return or otherwise dispose of the property. In the case of an untimely delivery by the NAFI, the Contracting Officer shall make a determination of the delay, if any caused by the NAFI.

(c) The Contracting Officer shall, upon written notification from the Contractor of any such discrepancies, make and equitable adjustment for such expenses incurred by the contractor.

(d) After completion of the contract, if any such property is lost, damaged or destroyed by the Contractor, the NAFI shall be paid the cost of repairs or damages or the fair market value of the property as determined by the Contracting Officer.

I-27. INSPECTION AND ACCEPTANCE (SEP 1984).

Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance and after any rejections, risk or loss will be on the Contractor unless loss results from negligence of the NAFI.

I-28. TERMINATION FOR CONVENIENCE (SEP 1984).

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with AR 215-4, Chapter 7, Section IV. To the extent that this contract is for services, and is so terminated, the NAFI shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

I-29. TERMINATION FOR DEFAULT (APR 87).

(a) (1) The NAFI may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below), or

(iii) Perform any of the other provision of this contract (but see subparagraph (a)(2) below)

(2) The NAFI's right to terminate this contract under subdivisions (i)(ii) and (i)(iii) above may be exercised if the Contractor does not cure such failure within 10 days (or one authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate supplies or services similar to those terminated, and the Contractor will be liable to the NAFI for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any time, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or the public enemy, (2) acts of the Government/NAFI in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the NAFI may require the Contractor to transfer title and deliver to the NAFI, as directed by the Contracting Officer, any

(1) Completed supplies, and

(2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired the termination portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the NAFI has an interest.

(f) The NAFI shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Clause. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the NAFI.

(h) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

I-30. COMMERCIAL WARRANTY (SEP 1984).

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the NAFI by any other clause of this contract.

I-31. ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION (SEP 1984).

If this contract is performed in whole or in part on premises owned or under the control of the United States Government and/or the NAFI, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents. Any violation of safety regulations, unless immediately corrected as directed by the Contracting Officer, shall be grounds for termination of the Contract under the "Termination For Default" clause.

I-32. RESERVED.

I-33. NON-WAIVER OF DEFAULTS (SEP 1984).

Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

I-34. PERMITS AND LICENSES (SEP 1984).

The Contractor will obtain all necessary permits and licenses at no cost to the NAFI.

I-35 REMOVAL OF CONTRACTOR'S EMPLOYEES (SEP 1984).

The Contractor agrees to utilize only experienced, responsible and capable people in the performance of the work. The Contracting Office may require that the Contractor remove employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interests of military security.

I-36 SAVE HARMLESS (SEP 1984).

The Contractor shall save harmless the NAFI and the United States Government from any claims of third parties arising out of or from accidents or incidents involving acts or omissions of the contractor, its officers, agents, or employees, occurring as a result of performance of the terms and conditions of this contract or as a result of operation of NAFI furnished equipment or materials, if any, or of the performance of the services under this contract.

I-37 SERVICE CONTRACT ACT OF 1965 (SEP 1984).

(Applicable to service contracts in excess of \$2,500 only)

This contract is subject to the Service Contract Act of 1965, as amended (41 USC 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(a) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) If there is such a wage determination attached to this contract, the Contract Officer shall require that any class of service employee which is not listed therein which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the Contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unclassified and the classification listed in the wage determination. Such conformed class of employees shall be paid the monetary wage and furnished the fringe benefits as are determined pursuant to the procedures in this action.

(3) Such conforming procedure shall be initiated by the Contractor prior to the contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative the employees themselves, shall be submitted by the Contractor to the Contracting Officer not later than thirty (30) days after such unlisted class of employees performed contract work. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and pertinent information, including the position of the Contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement with 30 days' receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(4) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as part of the wage determination.

(5) The process of establishing wage and fringe benefits rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending of the circumstances. Standard wage and salary administration practice which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (*Federal Wage Board Pay System and the General Schedule*) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintain between job classifications based on the skill required and the duties performed (In the case of a contract modification, an exercise of an option or existing contract or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conforming classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, at those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees. The Contractor shall advise the Contracting Officer of the action taken, but the other procedures in paragraph (a)(3) of the clause need not be followed.

(7) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(8) The wage rate and fringe benefits finally determined pursuant to paragraphs (a) and (3) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such enlisted employee is compensation agreed by the interested parties as finally determined by the Wage and Hour Division retroactive to the date such class employees commenced contract work shall be a violation of the Act and this contract.

(9) Upon discovery of failure to comply with paragraph (a)(2) through (8) of this clause the Wage and Hour Division shall make a final determination of conformed classifications, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(b) **Adjustment of Compensation.** If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 year, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) **Obligation to Furnish Fringe Benefits.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR part 4, and not otherwise.

(d) **Minimum Wage.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) **Successorship.** If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under the contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative find, after hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations the Department will issue a new or revised wage determination, setting forth the wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract, 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) **Notification to Employees.** The Contractor and any subcontractor shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(g) **Safe and Sanitary Working Conditions.** The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(h) **Records and Employees Interview.**

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work record containing the information specified below for each employee subject to the Act a shall make them available for inspection and transcription by authorized representative of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates, benefits payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by an employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to paragraph (a) of this clause. A copy of the report required by paragraph (a)(3) of this clause shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the Contractor pursuant to paragraph (o) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection or transcription shall be a violation of the regulation and this contract, and in the case failure to produce such records, the Contracting Officer, upon direction of the Department of Labor and notification of the Contractor, shall take such action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) **Pay Periods.** The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any accounts. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) **Withholding of Payment and Termination of Contract.** The Contracting Officer shall withhold or cause to be withheld from the Government/NAFI prime Contractor under this or any other Government/NAFI contract with the prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay under paid employees employed by the Contractor or subcontractor in the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government/NAFI may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(k) **Subcontractors.** The Contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "Contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government/NAFI prime Contractor".

(l) **Service Employee.** As used in this clause, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(m) **Federal Wage Board (Blue Collar) and General Schedule (White Collar) Wages and Fringe Benefits Applicable to Service Employee Classifications.** The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees to be employed under the contract with the Government/NAFI would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits.

EMPLOYEE CLASS	MONETARY WAGE
	FRINGE BENEFIT

(n) **Collective Bargaining Agreements Applicable to Service Employees.** If wages to be paid or fringe benefits to be furnished any service employees employed by the Government/NAFI prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government/NAFI prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(o) **Seniority List.** Not less than (10) days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (4173 of Regulations, 29 CFR Part 4), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The Contracting Officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(p) **Regulations Incorporated by Reference.** Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4 and are hereby incorporated by reference in this contract.

(q) **Contractor's Certificate.**

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) or any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government/NAFI contracts virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government/NAFI contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 1 U.S.C. 1001.

(r) **Variations, Tolerances, and Exemptions Involving Employment.** Notwithstanding any of provisions in paragraph (a) through (p) of this clause relating to the Service Contract Act of 1965, the following employees may be in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government/NAFI business.

(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits, cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped clients of sheltered workshops under section 14 of the Fair Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Lab Standards Act of 1938, or subject to different minimum rates of pay under the two acts authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof) applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(iii) The Administrator will also withdraw, annual, or cancel such certificates accordance with the regulations in Parts 525 and 526 of Title 26 of the Code of Federal Regulations.

(s) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment, and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set fourth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeyman employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(t) **Tips.** An employee engaged in an occupation in which he or she customarily and regularly receives more than thirty dollars (\$30) a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531; Provided, however, that the amount of such credit may not exceed \$1.24 per hour after December 31, 1960. To utilize this provision:

(i) The employer must inform tipped employee about this tip credit allowance before the credit is utilized;

(ii) The employees must be allowed to retain all tips (individually or through pooling arrangement and regardless of whether the employer elects to take credit for tips received);

(iii) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(iv) The use of such tip credit must have been permitted under any predecessor collective bargaining agreements applicable by virtue of section 4(c) of the Act.

(u) **Disputes Concerning Labor Standards.** Disputes arising out of the labor provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6 and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor or the employees or their representatives.

I-38. SERVICE CONTRACT ACT OF 1965 (SEP 1984).

(Applicable to Service Contracts not in excess of \$2,500.)

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of \$2,500, the contractor and subcontractor hereunder shall pay all of the employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4 and are hereby incorporated by reference in this contract.

CONTRACT CLAUSES NONAPPROPRIATED FUND SUPPLY AND SERVICE CONTRACTS (OCONUS VERSION)

For use of this form, see AR 215-4; the proponent agency is ODCSPER

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I-20.	PAYMENTS	I-39.	CLAUSES INCORPORATED BY REFERENCE
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I-1. DEFINITIONS.

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary of the Army, the Under Secretary, and the term "authorized representative" means any person, or board (other than the Contracting Officer) authorized to act for the head of agency or secretary.

(b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts on behalf of the nonappropriated fund instrumentality which is a party to this contract and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

I-2. NONAPPROPRIATED FUND INSTRUMENTALITY.

(a) The Nonappropriated Fund Instrumentality (NAFI) which is party to this contract is a nonappropriated fund instrumentality of the Department of the Army. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID THE CONTRACTOR OR CONCESSIONAIRE BY REASON OF THIS CONTRACT. This contract is not subject to The Contract Disputes Act of 1978.

I-3. COVENANT AGAINST CONTINGENT FEES.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the NAFI shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

I-4. CHANGES-FIXED PRICE SUPPLY.

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the NAFI in accordance with the drawings, design, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

I-9. EXAMINATION OF RECORDS.

(a) This clause is applicable if the amount of this contract exceeds \$10,000, and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The Contractor agrees to include the clause in "a" above, in all subcontracts hereunder that exceed \$10,000.

I-13. EQUAL OPPORTUNITY (OCONUS).

Contractor agrees in the performance of work under this contract there will be no discrimination against any employee or applicant for employment because of race, creed, color, sex, or national origin.

I-20. PAYMENTS.

The NAFI shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the NAFI if--

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

I-21. DISCOUNTS FOR PROMPT PAYMENT.

(a) In connection with any discount offered in conjunction with a supply contract, time will be computed from the date of delivery of the supplies to the carrier when acceptance is at the point of origin, or from the date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the NAFI, if the latter is later than date of delivery.

(b) In connection with any discount offered in conjunction with a services contract, time will be computed from the date of completion of the services or from the date the correct invoice or voucher is received in the office specified by the NAFI, if the latter is later than the date of completion of performance.

(c) Supply contracts involving relatively insignificant amounts of services, e.g., for relatively minor installation services, so that the obtaining of such services are not primary purpose of the contract shall be treated solely as a supply contract under this clause unless the services are separately priced under a separate contract line item. Any contract having as a primary purpose thereof the obtaining of services shall be treated under this clause as a services contract, provided, however, that for any contract involving both services and supplies under separate contract line items, each separate contract line item number shall be treated as a separate contract for the purpose of determining the applicability of subparagraphs (b) and (c) of this clause; and provided further, that if an invoice under a contract involving both supplies and services as separate contract line items covers both supplies and services from such separate contract line items rather than invoicing supply items and service items separately, then the latest date calculable under either subparagraph (b) and (c) of this clause shall be applied to determine the propriety of taking a prompt payment discount.

(d) Checks will be mailed or transmitted on or about the same day on which the check is dated. Payment shall be considered made on the date on which a check for such payment is dated.

I-22 INVOICES (JUN 1989).

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

- (1) Name and address of the contractor.
- (2) Invoice date.
- (3) Contract number or other authorization for supplies delivered or services performed (*including order number and contract line item number*).
- (4) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
- (5) Shipping and payment terms (*e.g. shipment number and date of shipment, prompt payment discount terms*). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
- (6) Name and address of contractor official to whom payment is to be sent (*must be the same as that on the contract or on a proper notice of assignment*).
- (7) Name (*where practicable*), title, phone number, and mailing address of person to be notified in event of a defective invoice.
- (8) Any other information or documentation required by the contract (*such as evidence of shipment*).

Invoices shall be prepared and submitted in quadruplicate (*one copy shall be marked "original"*) unless otherwise specified.

(b) for purposes of determining if interest begins to accrue under the Prompt Payment Act, Public Law 97-177, as amended by P.L. 100-496:

- (1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;
- (2) Payment shall be considered made on the date on which a check for such payment is dated;
- (3) Payment terms (e.g. "net 20") offered by the contractor will not be deemed a "required payment date", and
- (4) The following periods of time will not be included:
 - (i) After receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 7 days (3 days on contracts for meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils); and
 - (ii) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

I-25. DISPUTES.

(a) This contract is subject to the rules and regulation promulgated by the Secretary of Defense and Secretary of the Army for NAF contracting.

(b) The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(c) All disputes arising under or relating to this contract shall be resolved under this clause.

(d) "Claims," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(e) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, Contractor shall submit with the claim a certification that--

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
- (iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the NAFI is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contract is not an individual, the certification shall be executed by--

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(f) For Contract claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(g) The Contracting Officer's decision shall be final unless the Contractor appeals as provided in paragraph (h) of this clause.

(h) The Contracting Officer's final decision may be appealed by submitting a written appeal to the Armed Services Board of Contract Appeals within 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

I-27. INSPECTION AND ACCEPTANCE

Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance and after any rejections, risk or loss will be on the Contractor unless loss results from negligence of the NAFI.

I-28. TERMINATION FOR CONVENIENCE

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI. If this contract is for supplies and is so terminated, the Contractor shall be compensated in a manner identified with AR 215-4, Chapter 7, Section IV. In effect on this contract's extent that this contract is for services, and is so terminated, the NAFI shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

I-29. TERMINATION FOR DEFAULT

(a) (1) The NAFI may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (*but see subparagraph (a)(2) below*); or
- (iii) Perform any of the other provisions of this contract (*but see subparagraph (a)(2) below*).

(2) The NAFI's right to terminate this contract under subdivisions (1)(i) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (*or more if authorized in writing by the Contracting Officer*) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the NAFI for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy; (2) acts of the Government/NAFI in either its sovereign or contractual capacity; (3) fires; (4) floods; (5) epidemics; (6) quarantine restrictions; (7) strikes; (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor. effective date of termination.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the NAFI may require the Contractor to transfer title and deliver to the NAFI, as directed by the Contracting Officer, any

(1) completed supplies, and

(2) Partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (*collectively referred to as "manufacturing materials" in this clause*) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the NAFI has an interest.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the NAFI.

(h) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

(i) The NAFI shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Clause. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

I-36. SAVE HARMLESS.

The Contractor shall save harmless the NAFI and the United States Government from any claims of third parties arising out of or from accidents or incidents involving acts or omissions of the contractor, its officers, agents, or employees, occurring as a result of performance of the terms and conditions of this contract or as a result of operation of NAFI furnished equipment or materials, if any, or of the performance of the services under this contract.

I-39. CLAUSES INCORPORATED BY REFERENCE.

This contract incorporates the following supply and service contract clauses by reference as prescribed by AR 215-4 with same force and effect as if they were given in full text. Upon request, the Contracting Officer will make full text available.

NUMBER	TITLE
I-5	OFFICIALS NOT TO BENEFIT
I-6	GRATUITIES
I-7	NEW MATERIAL
I-8	VARIATION IN QUANTITY
I-17	CERTAIN COMMUNIST AREAS
I-18	INSURANCE
I-19	TAXES
I-23	EXTRAS
I-24	ASSIGNMENT OF CLAIMS
I-26	NAFI PROPERTY
I-30	COMMERCIAL WARRANTY
I-31	ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION
I-32	RESERVED
I-34	PERMITS AND LICENSES
I-35	REMOVAL OF CONTRACTOR'S EMPLOYEES

I-40. INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT.

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

CONTRACT CLAUSES (NONAPPROPRIATED FUND CONSTRUCTION, ALTERATION AND REPAIR CONTRACTS)

For use of this form, see AR 215-4, the proponent agency is ODCSPER

- I-1. DEFINITIONS
- I-2. NONAPPROPRIATED FUND INSTRUMENTALITY
- I-3. COVENANT AGAINST CONTINGENT FEES
- I-4. CHANGES-CONSTRUCTION
- I-5. OFFICIALS NOT TO BENEFIT
- I-6. GRATUITIES
- I-7. MATERIAL AND WORKMANSHIP
- I-8. COMPLIANCE WITH COPELAND ACT REQUIREMENTS
- I-9. EXAMINATION OF RECORDS
- I-10. CONVICT LABOR
- I-11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION-GENERAL
- I-12. WALSH-HEALEY ACT
- I-13. EQUAL OPPORTUNITY
- I-14. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS
- I-15. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS
- I-16. BUY AMERICAN ACT-CONSTRUCTION MATERIALS
- I-17. CERTAIN COMMUNIST AREAS
- I-18. INSURANCE-WORK ON A GOVERNMENT INSTALLATION
- I-19. TAXES
- I-20. PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS
- I-21. DISCOUNTS FOR PROMPT PAYMENT
- I-22. CERTIFICATION OF ELIGIBILITY
- I-23. DISPUTES CONCERNING LABOR STANDARDS
- I-24. ASSIGNMENT OF CLAIMS
- I-25. DISPUTES
- I-26. NAFI PROPERTY
- I-27. INSPECTION OF CONSTRUCTION
- I-28. TERMINATION FOR CONVENIENCE
- I-29. DEFAULT (FIXED PRICE CONSTRUCTION)
- I-30. WARRANTY OF CONSTRUCTION
- I-31. ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION
- I-32. MODIFICATION PROPOSALS-PRICE BREAKDOWN
- I-33. NON-WAIVER OF DEFAULTS
- I-34. PERMITS AND RESPONSIBILITIES
- I-35. REMOVAL OF CONTRACTOR'S EMPLOYEES
- I-36. SAVE HARMLESS
- I-37. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS
- I-38. CONTRACT TERMINATION-DEBARMENT
- I-39. INTEREST
- I-40. DIFFERING SITE CONDITIONS
- I-41. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK
- I-42. OPERATIONS AND STORAGE AREAS
- I-43. CLEANING UP
- I-44. SUSPENSION OF WORK
- I-45. OTHER CONTRACTS
- I-46. NOTICE TO THE NAFI OF LABOR DISPUTES
- I-47. IDENTIFICATION OF CONTRACTOR'S EMPLOYEES
- I-48. SCHEDULES FOR CONSTRUCTION CONTRACTS
- I-49. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS
- I-50. TIME EXTENSIONS
- I-51. LIQUIDATED DAMAGES-CONSTRUCTION
- I-52. COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK
- I-53. CLEAN AIR AND WATER
- I-54. COMPOSITION OF CONTRACTOR
- I-55. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION
- I-56. SUPERINTENDENCE BY CONTRACTOR
- I-57. USE AND POSSESSION PRIOR TO COMPLETION
- I-58. AVAILABILITY AND USE OF UTILITY SERVICES
- I-59. APPRENTICES AND TRAINEES
- I-60. PAYROLLS AND BASIC RECORDS
- I-61. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION
- I-62. LAYOUT OF WORK
- I-63. DAVIS-BACON ACT
- I-64. WITHHOLDING OF FUNDS
- I-65. SUBCONTRACTS (LABOR STANDARDS)
- I-66. LABOR STANDARDS FOR CONSTRUCTION WORK-FACILITIES CONTRACTS
- I-67. ANTI-KICKBACK PROCEDURES
- I-68. PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS.

I-1 DEFINITIONS (APRIL 1987)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary of the Army, the Under Secretary, and the term "authorized representative" means any person, or board (other than the Contracting Officer) authorized to act for the head of agency or secretary.

(b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts on behalf of the nonappropriated is a party to his contract and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

I-2 NONAPPROPRIATED FUND INSTRUMENTALITY (APRIL 1987)

The Nonappropriated Fund Instrumentality (NAFI) which is a party to this contract is a nonappropriated fund instrumentality of the Department of the Army. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID THE CONTRACTOR BY REASON OF THIS CONTRACT. This contract is NOT subject to The Contract Disputes Act of 1978. Reference AR 215-1, para 3-2 for definition of a NAFI.

I-3 COVENANT AGAINST CONTINGENT FEES (APRIL 1987)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the NAFI shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

I-4 CHANGES CONSTRUCTION (APRIL 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

- (1) In the specifications (including drawings and designs).
- (2) In the method or manner of performance of the work;
- (3) In the NAFI-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation or determination) from the Contracting Officer, that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order, and (2) that the contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the NAFI is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must submit any proposal under this clause within 30 days after (1) receipt of a written change order under paragraph (a) above or (2) the furnishing of a written notice under paragraph (b) above, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the NAFI. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

I-5 OFFICIALS NOT TO BENEFIT (APRIL 1987)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

I-6 GRATUITIES (APRIL 1987)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an official, or employee of the United States or the NAFI; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph a above, the NAFI is entitled to pursue the same remedies as in a breach of the contract.

(d) The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I-7 MATERIAL AND WORKMANSHIP (APRIL 1987)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, articles, or process that, the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating in the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

I-8 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (AUG 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

I-9 EXAMINATION OF RECORDS (APRIL 1987)

(a) This clause is applicable if the amount of this contract exceeds \$10,000, and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The Contractor agrees to include the clause in (a) above, in all subcontracts hereunder that exceed \$10,000.

I-10 CONVICT LABOR (APRIL 1987)

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

I-11 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION - GENERAL (APRIL 1987)

(Applicable to construction contracts of \$2,000 or more)

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for unpaid wages and liquidated damages.** The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) **Payrolls and basic records.** (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years for the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act. (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during work hours on the job.

(e) **Subcontract.** The Contractor and subcontractors shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontractors. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

I-12 WALSH-HEALEY PUBLIC CONTRACTS ACT (APRIL 1987)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

I-12 WALSH-HEALEY PUBLIC CONTRACTS ACT (APRIL 1987) (Continued)

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

I-13 EQUAL OPPORTUNITY (APRIL 1987)

(a) If, during, any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contract and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, or orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government/NAFI contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b) (1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

I-14 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APRIL 1987)

(Applicable to Contracts \$10,000 or More)

(a) **Definitions.** "Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. "Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause:

- (1) Includes, but is not limited to, openings that occur in jobs categorized as:
 - (i) Production and nonproduction;
 - (ii) Plant and office;
 - (iii) Laborers and mechanics;
 - (iv) Supervisory and nonsupervisory;
 - (v) Technical; and
 - (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year;

and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as-

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (*Secretary*) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (*the Act*), as amended.

(c) Listing openings.

(1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filed outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Posting.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (*Director*), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) **Noncompliance.** If the Contractor does not comply with the requirements of this clause appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) **Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I-15 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APRIL 1987)

(Applicable to Contracts over \$2,500)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as-

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) **Noncompliance.** If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) **Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I-16 BUY AMERICAN ACT-CONSTRUCTION MATERIALS (APRIL 1987) (CONUS ONLY)

(a) The Buy American Act (41 U.S.C. 10) provides that the NAFI give preference to domestic construction materials.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

"Construction materials," as used in this clause, means articles, materials, and supplies brought to the construction site for incorporation into the building or work.

"Domestic construction material," as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to paragraph 1-17 of AR 215-4.

(b) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractor, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract. (The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended.)

I-17 CERTAIN COMMUNIST AREAS (APRIL 1987)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract:

(1) Any supplies or services originating from sources within the Communist areas of North Korea, Vietnam, Cambodia, or Cuba, or

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

I-18 INSURANCE -WORK ON A GOVERNMENT INSTALLATION (APRIL 1987)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract. In no event shall the amount be lesser than the minimum requirements established by applicable state and local regulations and laws.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the NAFI's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. At least 5 days before entry of each such subcontractor's personnel on the Government installation, the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

I-19 TAXES (APRIL 1987)

(a) Except as may be otherwise provided in this contract, the contract price includes all taxes, duties, or other public charges in effect and applicable to this contract on the contract date, except any tax, duty, or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the NAFI or on its behalf; or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(b) If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or in part from the payment or the burden of any tax, duty, or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or a subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not included in the contract price and which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

(c) No adjustment of less than \$100 shall be made in the contract price pursuant to this clause.

(d) With respect to foreign taxes, NAFIs located in foreign countries will not pay to nor collect for any foreign country or political subdivision any tax unless the United States has consented to levy collection by treaty, convention, or executive agreement.

I-20 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APRIL 1987)

(a) The NAFI shall pay the Contractor the contract price as provided in this contract.

(b) The NAFI may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if--

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the NAFI and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the NAFI, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or

(2) Waiving the right of the NAFI to require the fulfillment of all of the terms of the contract.

(e) In making these progress payments, the NAFI shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(f) The NAFI shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work,

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the NAFI arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the assignment of Claims clause of this contract.

(g) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in AR 215-4, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

I-21 DISCOUNTS FOR PROMPT PAYMENT (APRIL 1987)

(Applicable to construction contracts in which progress payments are not used).

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date a proper invoice or voucher is received in the office specified by the NAFI, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which a wire transfer was made.

I-22 CERTIFICATION OF ELIGIBILITY (AUG 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded NAFI contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a NAFI contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

I-23 DISPUTES CONCERNING LABOR STANDARDS (AUG 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I-24 ASSIGNMENT OF CLAIMS (APRIL 1987)

The Contractor cannot assign any rights or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

I-25 DISPUTES (APRIL 1987)

(a) This contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Army for NAF contracting.

(b) The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(c) All disputes arising under or relating to this contract shall be resolved under this clause.

(d) "Claims," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(e) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that-

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the NAFI is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by-

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(f) For Contract claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(g) The Contracting Officer's decision shall be final unless the Contractor appeals as provided in paragraph (h) of this clause.

(h) The Contractor Officer's final decision may be appealed by submitting a written appeal to the Armed Services Board of Contract Appeals within 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

I-26 NAFI PROPERTY (APRIL 1987)

The Contractor shall sign a receipt for any property furnished by the NAFI and upon expiration of this contract shall return such property to the NAFI in the same condition as when received, except for fair wear and tear.

(a) Such property will be supplied to the Contractor in a condition suitable for the intended use and in a timely manner.

(b) If property is received in a less than functional state or in a time frame which would delay Contractor's performance, the Contractor shall, upon receipt of property, notify the Contracting Officer, detailing the facts, and as directed by the Contracting Officer and at NAFI expense, either repair, modify, return or otherwise dispose of the property. In the case of an untimely delivery by the NAFI, the Contracting Officer shall make a determination of the delay, if any, caused by the NAFI, the contracting officer shall make an equitable adjustment in accordance with paragraph (c).

(c) The Contracting Officer shall, upon written notification from the Contractor of any such discrepancies, make an equitable adjustment for such expenses incurred by the contractor.

(d) After completion of the contract, if any such property is lost, damaged or destroyed by the Contractor, the NAFI shall be paid the cost of repairs of damages or the fair market value of the property as determined by the Contracting Officer.

(e) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the NAFI. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The NAFI shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of NAFI furnished property;
- (2) Delivery of NAFI furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of NAFI furnished property; or
- (4) Failure to repair or replace NAFI property for which the NAFI is responsible.

I-27 INSPECTION OF CONSTRUCTION (APRIL 1987)

(a) Definition. "Work" includes, but is not limited to materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under this contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the NAFI or the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to NAFI or Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) NAFI or Government inspections and tests are for the sole benefit of the NAFI or the Government and do not--

- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
- (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or
- (4) Affect the continuing rights of the NAFI or the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a NAFI or Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The NAFI may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The NAFI or the Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the NAFI not to conform to contract requirements, unless in the public interest the NAFI consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the NAFI may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the NAFI decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the NAFI shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the NAFI's rights under any warranty or guarantee.

I-28 TERMINATION FOR CONVENIENCE (APRIL 1987)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI, in accordance with AR 215-4, Chapter 7, Section IV.

I-29 DEFAULT (FIXED-PRICE CONSTRUCTION) (APRIL 1987)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will ensure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the NAFI may, by written notice to the Contractor, terminate the right to proceed with the work or the separable part of the work that has been delayed. In this event, the NAFI may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the NAFI resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the NAFI in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the NAFI and/or Government, in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the NAFI or with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for convenience of the NAFI.

(d) The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

I-30 WARRANTY OF CONSTRUCTION (APRIL 1987)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the NAFI takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the NAFI takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to NAFI or Government-owned or controlled real or personal property, when that damage is the result of--

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the NAFI shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the NAFI if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the NAFI, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the NAFI may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the NAFI nor for the repair of any damage that results from any defect in NAFI furnished material or design.

(j) This warranty shall not limit the NAFI's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

FOR BRAND NAME AND MODEL SPECIFICATIONS IN NAFI CONTRACTS

Paragraph (k) below will apply if the NAFI specifies in the contract the use of any equipment by "brand name or model".

(k) Defects in design or manufacture of equipment specified by the NAFI on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the NAFI.

I-31 ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION (APRIL 1987)

If this contract is performed in whole or in part on premises owned or under the control of the United States Government and/or the NAFI, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents. Any violation of safety regulations, unless immediately corrected as directed by the Contracting Officer, shall be grounds for termination of the Contract under the Default(Fixed-Price Construction) Clause.

I-32 MODIFICATION PROPOSALS-PRICE BREAKDOWN (APRIL 1987)

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, the justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

I-33 NON-WAIVER OF DEFAULTS (APRIL 1987)

Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

I-34 PERMITS AND RESPONSIBILITIES (APRIL 1987)

The Contractor shall, without additional expense to the NAFI, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

I-35 REMOVAL OF CONTRACTOR'S EMPLOYEES (APRIL 1987)

The Contractor agrees to utilize only experienced, responsible and capable people in the performance of the work. The Contracting Officer may require that the Contractor remove employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interests of military security.

I-36 SAVE HARMLESS (APRIL 1987)

The Contractor shall save harmless the NAFI and the United States Government from any claims of third parties arising out of or from accidents or incidents involving acts or omissions of the contractor, its officers, agents, or employees, occurring as a result of performance of the terms and conditions of this contract or as a result of operation of NAFI furnished equipment or materials, if any, or of the performance of the services under this contract.

I-37 COMPLIANCE WITH DAVIS-BACON AND RELATED ACTION REGULATIONS (AUG 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I-38 CONTRACT TERMINATION-DEBARMENT (AUG 1988)

A breach of the contract clauses entitled Davis-Bacon Act Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance With Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5-12.

I-39 INTEREST (APRIL 1987)

(a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to the NAFI under this contract (*net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)*) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (*Public Law 95-563*), (*however other provisions of the Act are not applicable to NAFIs - see Disputes Clause*) which is applicable to the period in which the amounts become due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
- (3) The date the NAFI transmits to the Contractor a proposed supplementary agreement to confirm completed negotiations establishing the amount of debt.
- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced by the Contracting Officer.

I-40 DIFFERING SITE CONDITIONS (APRIL 1987)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.

(b) The Contracting Officer shall investigate the site conditions, promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

I-41 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APRIL 1987)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work, or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials, (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides or similar physical conditions at the site; (4) the conformation and conditions of the ground, and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the NAFI, as well as from drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the NAFI.

(b) The NAFI assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the NAFI. Nor does the NAFI assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers, employees, or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

I-42 OPERATIONS AND STORAGE AREAS (APRIL 1987)

(a) The Contractor shall confine all operations (including storage of materials) on NAFI or Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government and the NAFI, its officers, employees, and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices,) and utilities may be erected by the Contractor only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the NAFI. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the contractor at the contractor's expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

I-43 CLEANING UP (APRIL 1987)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the NAFI or the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat and orderly condition satisfactory to the Contracting Officer.

I-44 SUSPENSION OF WORK (APRIL 1987)

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the NAFI.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified) an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

I-45 OTHER CONTRACTS (APRIL 1987)

The NAFI or the Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with NAFI and Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by NAFI or Government employees.

I-46 NOTICE TO THE NAFI OF LABOR DISPUTES (APRIL 1987)

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

I-47 IDENTIFICATION OF CONTRACTOR'S EMPLOYEES (APRIL 1987)

(a) The Contractor without expense to the NAFI shall provide for each employee, working on this contract, an identification badge as may be approved and directed by the Contracting Officer. Each such employee shall be required to wear his badge upon his person at all times while on duty at the site of work or at other times and places where identification is required, and in such manner that it will be plainly visible as a means of identification. If required by the Contracting Officer, the Contractor shall obtain fingerprints and other means of identification for all such employees.

(b) In the event the NAFI desires registration of all employees working on this project, the Contractor shall cause them to be registered at such place and in such manner as the Contracting Officer may direct. Upon notification that registration is to be effected, the Contractor shall not permit any employee to work on the job site until such employee has completed the required registration.

I-48 SCHEDULES FOR CONSTRUCTION CONTRACTS (APRIL 1987)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take such steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the NAFI. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of the construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of the contract.

I-49 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APRIL 1987)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

I-50 TIME EXTENSIONS (APRIL 1987)

Notwithstanding any other provisions of this contract, it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

I-51 LIQUIDATED DAMAGES - CONSTRUCTION (APRIL 1987)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the NAFI as liquidated damages, the sum of _____ {Contracting Officer insert amount} for each day of delay.

(b) If the NAFI terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the NAFI in completing the work.

(c) If the NAFI does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

I-52 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APRIL 1987)

The Contractor will be required to (a) commence work under this contract within seven calendar days (unless otherwise specified within this contract) after the date of receipt by him of notice to proceed, (b) to prosecute work diligently, and (c) to complete the entire work, ready for use not later than the time specified in the terms of this contract. The time stated for completion shall include final clean up of the premises.

I-53 CLEAN AIR AND WATER (APR 1987)

(Applicable to contracts in excess of \$100,000)

(a) "Air Act," as used in this clause, means Clean Air Act (42 U.S.C. 7401 et seq.)

"Clean air standards," as used in this clause, means-

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d)).

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)). "Clean water standards," as used in this clause, means any limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with--

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area. "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees--

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

I-54 COMPOSITION OF CONTRACTOR (APRIL 1987)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

I-55 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APRIL 1987)

(Applicable to construction contracts in excess of \$10,000)

(a) Definitions.

"Covered area" as used in this clause, means the geographical area described in the solicitation for this contract.

"Director" as used in this clause, means Director, Office of Federal Contract Compliance Programs, (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.

"Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs g (1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause. Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this Clause shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file on the names, addresses and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g) (2) above.

(6) Disseminate the Contractor's equal employment policy by--

(i) providing notice of the policy to unions and training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to all employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination or other employment decisions. Conduct a review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontractors for minority and female construction contractors and supplies, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community or similar group of which the Contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor--

- (1) Actively participates in the group;
 - (2) Makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
 - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor.
- The obligation to comply is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order 11246 as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this Clause and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any failure to carry out these sanctions and penalties as ordered shall be in violation of this Clause and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under this Clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph g above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this Clause, the Director shall take action as prescribed in 41 CFR 60.4.8.

(n) The Contractor shall designate a responsible official to:

- (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
- (2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, (if any), employee identification number, social security number, race, sex, status (e.g., *mechanic, apprentice, trainee, helper or laborer*), dates of change in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the *Public Works Employment Act of 1977* and the *Community Development Block Grant Program*).

I-56 SUPERINTENDENCE BY CONTRACTOR (APRIL 1987)

At all times during the performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

I-57 USE AND POSSESSION PRIOR TO COMPLETION (APRIL 1987)

(a) The NAFI or the Government shall have the right to take possession of any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the NAFI or the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall relieve the Contractor of responsibility for complying with the terms of the contract. The NAFI's or the Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the NAFI or the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the NAFI's or the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the NAFI or the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

I-58 AVAILABILITY AND USE OF UTILITY SERVICES (APRIL 1987)

(a) The NAFI shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the NAFI or the Government, or where the utility is produced by the NAFI or the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the NAFI, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

I-59 APPRENTICES AND TRAINEES (AUG 1988)

(a) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (when appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. When a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid for the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination, unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

I-60 PAYROLLS AND BASIC RECORDS (AUG 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rate of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such fringe benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of persons employed under the contract and shall certify:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each labor or mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations 29 CFR Part 3; and

(iii) That each labor or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

I-61 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APRIL 1987)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer, is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the NAFI by the Contractor, subcontractor, any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The NAFI may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the NAFI's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

(h) This clause shall be included in all subcontracts at any tier.

I-62 LAYOUT OF WORK (APRIL 1987)

The Contractor shall lay out its work from established base lines and bench marks indicated on the drawings furnished by the NAFI, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

I-63 DAVIS-BACON ACT (AUG 1988)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(ii) The classification is utilized in the area by the construction industry;

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (*if known*), or their representatives, and the Contracting Officer agree on the classification and wage rate (*including the amount designated for fringe benefits, where appropriate*), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (*including the amount designated for fringe benefits, where appropriate*), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer, or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefits as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I-64 WITHHOLDING OF FUNDS (AUG 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I-65 SUBCONTRACTS (LABOR STANDARDS) (AUG 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within 14 days after award of the contract, the Contractor shall delivery to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after award of any subsequently awarded subcontract, the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

I-66 LABOR STANDARDS FOR CONSTRUCTION WORK-FACILITIES CONTRACTS (AUG 1988)

(a) In the event that construction, alteration, or repair (*including painting and decorating*) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses in performance of such work.

- (1) Contract Work Hours and Safety Standards Act-Overtime Compensation.
- (2) Davis-Bacon Act.
- (3) Withholding of Funds.
- (4) Payrolls and Basic Records.
- (5) Apprentices and Trainees.
- (6) Compliance With Copeland Act Requirements.
- (7) Subcontracts (Labor Standards).
- (8) Contract Termination-Debarment.
- (9) Compliance with Davis-Bacon and Related Act Regulations.
- (10) Disputes Concerning Labor Standards.
- (11) Certification of Eligibility.

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

I-67 ANTI-KICKBACK PROCEDURES (AUG 1988)

(a) Definitions.

"Kickback" as used in this clause means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Prime Contractor employee" as used in this clause means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract" as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee" as used in this clause means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58)(the Act), prohibits any person from--

(1) Providing or attempting to provide or offering to provide any kickback; or

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) Regardless of the contract tier at which a kickback was provided, accepted, or charged under the contract in violation of paragraph (b) of this clause, the Contracting Officer may: (i) Offset the amount of the kickback against any monies owed by the NAFI under this contract and/or (ii) direct that the Contractor withhold from sums owed the subcontractor, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the NAFI unless the NAFI has already offset those monies under subdivision (c)(4)(i) of this clause. In the latter case, the Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5), in all subcontracts under this contract.

I-68 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (APR 1989)

Notwithstanding any other payment terms in this contract, the NAFI will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days. The term "foreign vendor" means an incorporated concern not incorporated in the United States or an unincorporated concern having its principal place of business outside the United States.

(a) **Invoice Payments.** (1) for purposes of this clause, there are several types of invoice payments which may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. However, if the designated billing office fails to annotate the payment request with the actual date of receipt, the payment due date shall be deemed to be the 14th day after the Contractor's payment request is dated, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 1 20, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the NAFI arising by virtue of the contract, and payments for partial deliveries that have been accepted by the NAFI (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after acceptance of the work or services completed by the Contractor, whichever is later. However, if the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items stated in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into accounting the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause:

- (i) Name and address of the Contractor
- (ii) Invoice date.
- (iii) Contract number or other authorization for work or services performed, (including order number and contract line item number).
- (iv) Description of work or services performed.
- (v) Delivery and payment terms (e.g., prompt payment discount terms).
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.
- (viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause 1-20, Payments Under Fixed-Price Construction Contracts.
- (ix) Any other information or documentation required by the contract.

(3) An interest penalty shall be paid automatically by the designated payment office, without request from the contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

- (i) A proper invoice was received by the designated billing office.
- (ii) A receiving report of other NAFI documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the NAFI and the Contractor.

(4) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (otherwise the Contracts Disputes Act of 1978 does not apply to this contract). This rate is referred to as the "Renegotiation Board Interest Rate", and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the NAFI and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, NAFI acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel NAFI officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

- (ii) The following periods of time will not be included in the determination of an interest penalty:
 - (A) The period taken to notify the Contractor of defects in invoices submitted to the NAFI, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause 1-25, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the NAFI and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause 1-25, Disputes.

(5) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget shall be paid in addition to the interest penalty amount if the Contractor:

- (i) Is owed an interest penalty;
- (ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and
- (iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the NAFI pay such a penalty.

(b) Contract Financing Payments.

(1) For purposes of this clause, if applicable, "contract financing payments" means a NAFI disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the NAFI, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments and interim payments under cost-type contracts.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delay.

(c) The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) A payment clause which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under the contract.

(2) An interest penalty clause obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause:

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligations to pay an interest penalty (otherwise the Contract Disputes Act of 1978 does not apply).

(3) A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) The clauses required by paragraph (c) of this clause shall not be constructed to impair the right of Contractor or subcontractor at any tier to negotiate, and include in their subcontract, provisions which:

(1) Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Permit the Contractor or subcontractor to make determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Permit such withholding without incurring any obligation to pay a late payment penalty if:

(i) A notice conforming to the standards of paragraph (g) of this clause has been previously furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting officer.

(e) If a Contractor, after making a request for payment to the NAFI, but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall:

(1) Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and:

(i) Make such payment within:

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the NAFI because of a reduction under subdivision (e)(5)(i) of this clause); or

(B) Seven days after the Contractor recovers such funds from the NAFI; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes act of 1978 (41 U.S.C. 611) in effect at the time the contractor accrues the obligation to pay an interest penalty (otherwise the Contracts Disputes act of 1978 does not apply to this contract);

(5) Notify the contracting Officer upon:

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Be obligated to pay to the NAFI an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the NAFI until:

- (i) The day the identified subcontractor performance deficiency is corrected; or
- (ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f)(1) If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, then the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause:

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty (otherwise the Contract Disputes Act of 1978 does not apply to this contract).

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying:

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) The Contractor may not request payment from the NAFI of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the NAFI is a party. The NAFI may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or other remedies available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by the subcontractor.

(k) The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the NAFI for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

CONTRACT CLAUSES
(NAF ARCHITECTURE-ENGINEER CONTRACTS)

For use of this form see AR 215-4, the proponent agency is ODCSPER

SECTION I: CONTRACT CLAUSES (Nonappropriated Fund Architect-Engineer Contracts)

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I-1. DEFINITIONS (APRIL 1987).

a. "Head of the agency" (also called "agency head") or "Secretary" means the Secretary of the Army, the Under Secretary, and the term "authorized representative" means any person, or board (other than the Contracting Officer) authorized to act for the head of agency or secretary.

b. "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts on behalf of the nonappropriated fund instrumentality which is a party to this contract and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

c. "Government" or "entity of the Government" means any entity of the legislative or judicial branch, any executive agency, military department, government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

d. "Nonappropriated Fund Instrumentality" (NAFI). An integral DOD organizational entity which performs an essential Government function. It acts in its own name to provide or assist other DOD organizations in providing morale, welfare, and recreational programs for military personnel and civilians. It is established and maintained individually or jointly by the heads of the DOD Components. As a fiscal entity, it maintains custody of and control over its nonappropriated funds. It is responsible for the prudent administration, safeguarding, preservation, and maintenance of those appropriated fund resources made available to carry out its function. With its nonappropriated funds, it contributes to the morale, welfare, and recreational programs of other authorized organizational entities when so authorized. It is not incorporated under the laws of any State or the District of Columbia and enjoys the legal status of an instrumentality of the United States.

I-2. NONAPPROPRIATED FUND INSTRUMENTALITY (APRIL 1987)

The Nonappropriated Fund Instrumentality (NAFI) which is a party to this contract is a nonappropriated fund instrumentality of the Department of the Army. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID THE CONTRACTOR BY REASON OF THIS CONTRACT. This Contract is not subject to the Contract Disputes Act of 1978.

I-3. COVENANT AGAINST CONTINGENT FEES (APRIL 1987).

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the NAFI shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

I-4. RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1987).

a. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

b. Neither the NAFI's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Fund in accordance with applicable law for all damages to the Fund caused by the Contractor's negligent performance of any of the services furnished under this contract.

c. The rights and remedies of the NAFI provided for under this contract are in addition to any other rights and remedies provided by law.

d. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ALTERNATE 1. (Use only with Title II A & E Contracts.)

a. The Contractor shall be responsible for the professional quality and technical accuracy of all services furnished within the scope of this contract.

I-5. CHANGES (APR 1987).

a. The Contracting Officer may, at any time, by written order, make changes within the general scope of the contract in the services to be performed. If such changes cause an increase or decrease in the Architect-Engineer's cost of, or time required for, performance of any services under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Architect-Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Architect-Engineer of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract.

b. No services for which an additional cost or fee will be charged by the Architect-Engineer shall be furnished without the prior written authorization of the Contracting Officer.

I-6. OFFICIALS NOT TO BENEFIT (APRIL 1987).

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

I-7. GRATUITIES (APRIL 1987).

a. The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an official, or employee of the United States or the NAFI; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

b. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

c. If this contract is terminated under paragraph a above, the NAFI is entitled to pursue the same remedies as in a breach of the contract.

d. The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I-8. DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF FUND (APR 1987).

All designs, drawings, specifications, notes, and other work developed in the performance of this contract shall be and remain the sole property of the Fund and may be used on any other work without additional compensation to the Architect-Engineer. With respect thereto, the Architect-Engineer agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The Architect-Engineer for a period of 3 years after completion of the project agrees to furnish and provide access to all retained materials on the request of the Contracting Officer. Unless otherwise provided in this contract, the Architect-Engineer shall have the right to retain copies of all such materials beyond such period.

I-9. EXAMINATION OF RECORDS (SEP 1984).

a. This clause is applicable if the amount of this contract exceeds \$10,000, and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

b. The Contractor agrees to include the clause in a above, in all subcontracts hereunder that exceed \$10,000.

I-10. CONVICT LABOR (SEP 1984).

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

I-11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION - GENERAL (APRIL 1987).

(Applicable to construction contracts of \$2,000 or more, service contracts of \$2,500 or more, and contracts not subject to provisions of the Walsh-Healey Public Contracts Act.)

a. **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

b. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph a of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph a of this clause.

c. **Withholding for unpaid wages and liquidated damages.** The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph b of this clause.

d. **Payrolls and basic records.**

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph d (1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during work hours on the job.

e. **Subcontract.** The Contractor and subcontractors shall insert in any subcontracts the provisions set forth in paragraphs a through e of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontractors. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs a through e of this clause.

I-12. EQUAL OPPORTUNITY (APRIL 1987).

a. If, during, any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contract and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs b (1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

b. During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, or orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government/NAFI contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph b (1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

c. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

I-13. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (SEP 1984).

(Applicable to Contracts \$10,000 or More.)

a. **Definitions.** "Appropriate office of the State Employment Service System," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. "Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship. "Suitable employment openings," as used in this clause:

- (1) Includes, but is not limited to, openings that occur in jobs categorized as--
 - (i) Production and nonproduction;
 - (ii) Plant and office;
 - (iii) Laborers and mechanics;
 - (iv) Supervisory and nonsupervisory;
 - (v) Technical; and
 - (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year, and

- (2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

b. **General.**

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as:

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

- (2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (*Secretary*) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (*the Act*), as amended.

c. **Listing openings.**

- (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including ones not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

- (3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

- (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's/NAFI's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's/NAFI's interest.

d. Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filed outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph c above of this clause did not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

e. Posting.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (*Director*), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

f. Noncompliance. If the Contractor does not comply with the requirements of this clause appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

g. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I-14. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (SEP 1984).

(Applicable to Contracts over \$2,500)

a. General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (*Secretary*) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (*the Act*), as amended.

b. Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (*Director*), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

c. Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

d. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I-15. PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (APR 1987).

a. Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

b. Upon approval of the estimate of the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; provided, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Fund, the Contracting Officer may release the excess amount to the Contractor.

c. Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services," the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

d. Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government/NAFI arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

e. Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in AR 215-4 including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the changes clause, or funding and other administrative changes.

I-16 PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (APR 1989).

Notwithstanding any other payment terms in this contract, the NAFI will make invoice payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified. The term "foreign vendor" means an incorporated concern not incorporated in the United States, or an unincorporated concern having its principal place of business outside the United States.

a. Invoice Payments.

(1) For purposes of this clause, "invoice payment" means a NAFI disbursement of monies to a Contractor under a contract or other authorization for work or services accepted by the NAFI, payments for partial deliveries that have been accepted by the NAFI and progress payments based on Contracting Officer approval of the estimated amount and value of work or services performed.

(2) The due date for making invoice payments shall be described in this subparagraph a(2).

(i) The due date for work or services completed by the Contractor shall be the later of the following two elements:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor

(B) The 30th day after NAFI acceptance of the work or services completed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) The due date for progress payments shall be the 30th day after the NAFI's approval of Contractor estimates of work or services accomplished.

(iii) However, if the designated billing office fails to annotate the invoice or payment request with the actual date of receipt, the payment due date shall be deemed to be the 30th day after the date the Contractor's invoice or payment request is dated, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(3) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions a(i) through a(3)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph a(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for work or services performed (including other number contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract nor in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract.

(4) Any interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions a(4)(i) through a(4)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

- (i) A proper invoice was received by the designated billing office
- (ii) A receiving report or other NAFI documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for work on services performed, the amount was not subject to further contract settlement actions between the NAFI and the Contractor.

(5) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect after the due date, except where the interest penalty is prescribed by other governmental authority (otherwise the Contract Disputes Act of 1978 does not apply to this contract). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the NAFI and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph a(3) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, NAFI acceptance or approval shall be deemed to have occurred constructively as shown in subdivisions a(5)(i)(A) and (B) of this clause. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress amounts. These requirements also do not compel NAFI officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor NAFI acceptance shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, NAFI approval shall be deemed to have occurred on the 7th day after Contractor estimates have been received by the designated billing office.

(ii) The following periods of time will not be included in the determination of an interest penalty

(A) The period taken to notify the Contractor of defects in invoices submitted to the NAFI, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause I-31, Disputes, or for more than 7 years. Interest penalties of less than \$1.00 need not be paid

(iv) Interest penalties are not required on payment delays due to disagreement between the NAFI and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause I-31, Disputes.

(6) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid

(7) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor

(i) Is owed an interest penalty,

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid, and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the NAFI pay such a penalty.

b. Contract Financing Payments.

(1) For purposes of this clause, if applicable, "contract financing payment," means a NAFI disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the NAFI, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loan, or other arrangements that do not involve recurrent submissions of contract financing request, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays.

I-17. ASSIGNMENT OF CLAIMS (APR 1987).

The Contractor cannot assign any rights or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

I-18. INSURANCE - WORK ON A GOVERNMENT INSTALLATION (APRIL 1987).

a. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract. In no event shall the amount be lesser than the minimum requirements established by applicable state and local regulations and laws.

b. Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the NAFI's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

c. The Contractor shall insert the substance of this clause, including this paragraph c, in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. At least 5 days before entry of each such subcontractor's personnel on the Government installation, the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current certificate of insurance, meeting the requirements of paragraph b above, for each such subcontractor.

I-19. PRICING OF ADJUSTMENTS (APR 1987).

When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other provision of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation (FAR) and the DOD FAR Supplement in effect on the date of this contract.

I-20. SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (APR 1987).

Any subcontractors and outside associates or consultants required by the Architect-Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Any substitution in such contractors, associates, or consultants will be subject to the prior approval of the Contracting Officer.

I-21. AUDIT-NEGOTIATION (APR 1987).

(The following clause is applicable if this contract is over \$25,000 and was entered into by negotiation.)

a. **Examination of Costs.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

b. **Cost or pricing data.** If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Fund shall have the right to examine and audit all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

c. **Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Fund shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

d. **Availability.** The Contractor shall make available at its office at all reasonable times the materials described in paragraphs a and b above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any longer period required by statute or by other clauses of this contract. In addition:-

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

e. The Contractor shall insert a clause containing all the terms of this clause, including this paragraph e, in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Fund prime contract.

I-22. REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1987).

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

I-23. WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1987).

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

I-24. SUSPENSION OF WORK (APR 1987).

a. The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the NAFI.

b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified) an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

c. A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

I-25 DESIGN WITHIN FUNDING LIMITATIONS (APR 1987).

a. The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price set forth in paragraph c below. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Fund if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

b. The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a useable facility within these limitations. Upon receipt of such information, the Contracting Officer shall review the Contractor's revised estimate of construction cost. The Fund may, if it determines that the estimated construction contract price set forth in this contract is so low that the award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph c below, or the Fund may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Fund shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

c. The estimated construction contract price for the project described in this contract is \$ _____ (insert appropriate amount) exclusive of the cost of furniture and portable equipment.

I-26. NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1987).

In the performance of this contract, the Architect-Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through Government/NAFI or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer the Architect-Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Architect-Engineer to be available only from a sole source. As to any such design or specification the Architect-Engineer shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design specification.

I-27. RIGHTS IN SHOP DRAWINGS (APR 1987).

a. Shop drawings for construction means drawings, submitted to the Fund by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit and attachment details) of materials or equipment. The Fund may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

b. This clause, including this paragraph b, shall be included in all subcontracts hereunder at any tier.

I-28. FUND RIGHTS (UNLIMITED) (APR 1987).

The Fund shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Fund design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Fund a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

I-29. OPTION FOR SUPERVISION AND INSPECTION SERVICES (APR 1972).

At any time prior to six (6) months after satisfactory completion and acceptance of the work to be furnished hereunder, the Fund at its option, may direct, by a written order, the Architect-Engineer to perform any part or all of the supervision and inspection services provided herein. Upon receipt of such direction, the Architect-Engineer shall promptly proceed with such work and services.

I-30. CONTRACTING OFFICER'S DECISIONS (APR 1987).

The extent and character of the work to be done by the Architect-Engineer shall be subject to the general supervision, direction, control and approval of the Contracting Officer.

I-31. DISPUTES (SEP 1984).

a. This contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Army for NAF contracting.

b. The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613)

c. All disputes arising under or relating to this contract shall be resolved under this clause.

d. "Claims," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

e. (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that:

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
- (iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the NAFI is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by:

- (a) A senior company official in charge at the Contractor's plant or location involved; or
- (b) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

f. For Contract claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor certified claims over \$50,000 the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

g. The Contracting Officer's decision shall be final unless the Contractor appeals as provided in paragraph h of this clause.

h. The Contractor Officer's final decision may be appealed by submitting a written appeal to the Armed Services Board of Contract Appeals within 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

i. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

I-32. TERMINATION (APR 1987).

a. The Contracting Officer may, by written notice to the Architect-Engineer, terminate this contract in whole or in part at any time, either for the Fund's convenience or because of the failure of the Architect-Engineer to fulfill his contract obligations. Upon receipt of such notice, the Architect-Engineer shall:

(1) immediately discontinue all services affected (*unless the notice directs otherwise*), and

(2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Architect-Engineer in performing this contract, whether completed or in process.

b. If the termination is for the convenience of the Fund an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to the failure of the Architect-Engineer to fulfill his contract obligations, the Fund may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Architect-Engineer shall be liable to the Fund for any additional cost occasioned to the Fund thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Architect-Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Fund. In such event, adjustment in the contract price shall be made as provided in paragraph (b) of this clause.

e. The rights and remedies of the Fund provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

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